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Laws Relating to Intoxicating
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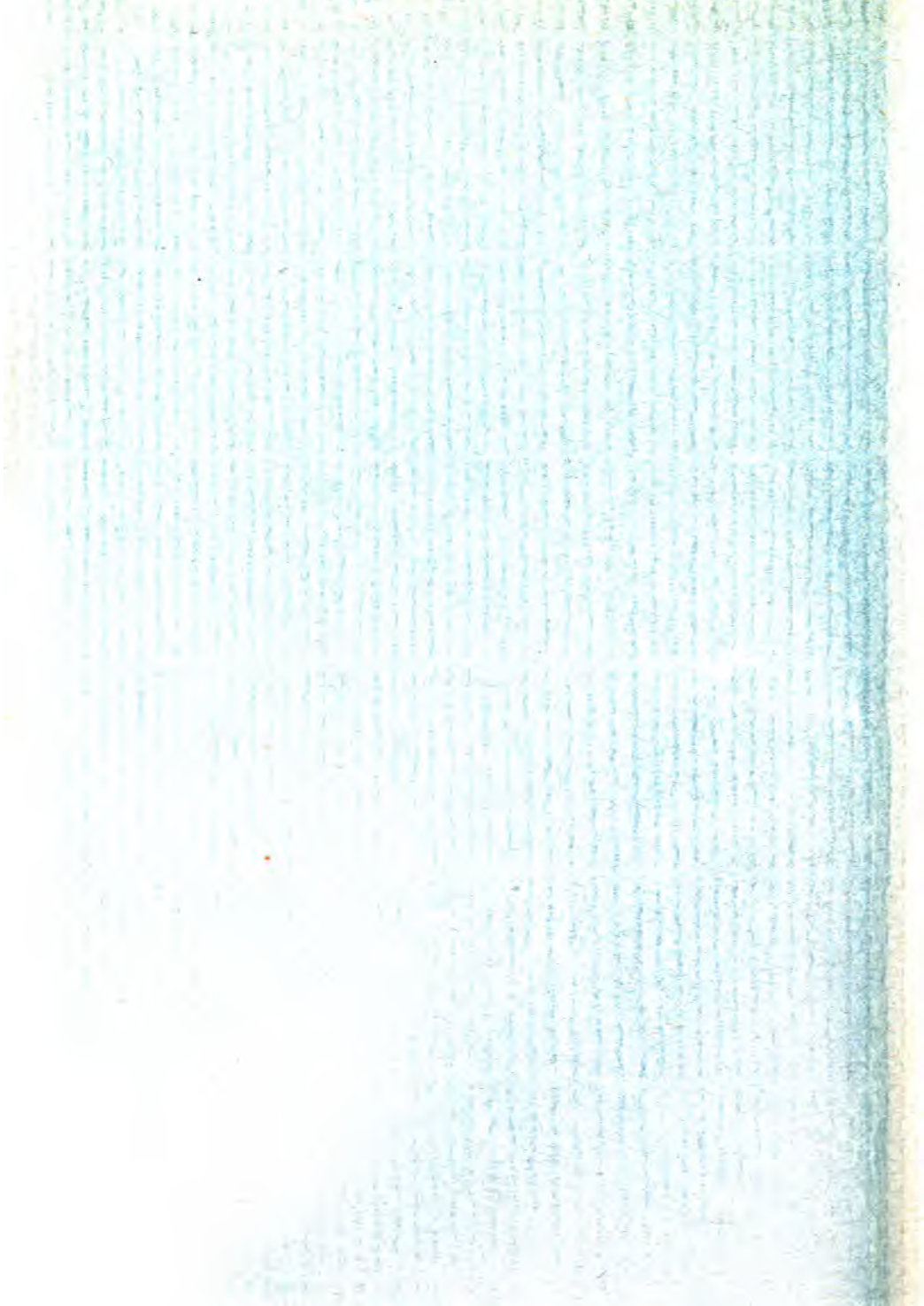
TO

Intoxicating Liquor

Issued by the Department of Justice

H. M. HAVNER
Attorney General of Iowa

Published by
THE STATE OF IOWA
DES MOINES



Iowa. Laws, statutes, etc. Liquor law

IOWA LAWS RELATING
TO
INTOXICATING LIQUOR *ct*

**A complete compilation of the Iowa Statutes relating to
Intoxicating Liquor, including Extracts from
United States Statutes**

Including laws relating to Special Agents, Red Light Injunctions, Cigarettes, Removal of Public Officials, Criminal Procedure and Duties of Officers

EDITED BY B. J. POWERS

Issued by the Department of Justice

H. M. HAVNER
Attorney General of Iowa

1917

Published by
THE STATE OF IOWA
DES MOINES

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TRANSFERRED FROM
DEPT. OF SOCIAL ETHICS



EDITOR'S NOTE.

The purpose of this compilation is to present in one volume all the law relating to intoxicating liquor now on the statutes of Iowa and to give citations on points of law where confusion exists.

United States statutes are set forth in order to assist those charged with the duty of law enforcement to better fulfill their duties.

There has been no attempt in this compilation to give all the authorities to be found supporting the views herein presented.

New amendments appear in black face type.

TABLE OF CONTENTS

Constitutional Amendment	4
The Manufacture and Sale of Intoxicating Liquor Prohibited—Nuisances	5
Laws Relating to Permits and Permit Holders.....	16
Laws Relating to Search Warrants.....	41
Miscellaneous Provisions and Penalties.....	50
Transportation of Intoxicating Liquor.....	64
Mulct Tax	69
Criminal Procedure	80
Special Agents	91
The Red Light Injunction Law.....	94
Laws of the United States Relating to Intoxicating Liquor.....	102
Laws of Iowa Relating to Cigarettes.....	107
Duties of Officers—In General.....	116
Removal from Office	122

4-18-49 Miller

CONSTITUTIONAL AMENDMENT

The thirty-sixth general assembly proposed to amend the constitution of Iowa (Senate Joint Resolution No. 6) by adding a provision prohibiting the manufacture, sale, or keeping for sale of intoxicating liquor as a beverage. This proposal was agreed to by a majority of the members of the thirty-seventh general assembly (Senate Joint Resolution No. 3), and was ordered submitted to the people for their ratification at a special election to be held October 15, 1917. (37 G. A., S. F. 176.)

The following proposed amendment to article I of the constitution of Iowa will therefore be submitted, namely:

To add thereto following section twenty-six (26) thereof and as section twenty-seven (27) of article one (1) of said constitution the following, to-wit:

“SEC. 27. The manufacture, sale, or keeping for sale, as a beverage, of intoxicating liquors, including ale, wine and beer, shall be forever prohibited within this state. The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall provide suitable penalties for the violation of the provisions hereof.”

Over thirty-five years ago an attempt was made to amend the constitution of Iowa in a similar manner. The several steps were taken and the governor, on the 29th of July, 1882, declared the amendment legally adopted. Later it was discovered that the amendment passed by the nineteenth general assembly and ratified by the electors did not include the words “or to be used” which were in the amendment passed by the eighteenth general assembly. Therefore, the supreme court of Iowa, in the case of Koehler vs. Hill, 60 Iowa, 543 (April, 1883), declared the amendment void.

THE MANUFACTURE AND SALE OF INTOXICATING LIQUOR PROHIBITED IN IOWA

NUISANCES.

In this state we have what is known as statutory prohibition. The only advantage of having constitutional prohibition is that by providing for the prohibition issue in the constitution the question is settled and can only be changed in one of two ways: (1) by the constitutional convention which cannot meet except once in ten years and then only when a majority of the people vote such a convention; (2) by having two consecutive legislatures agreeing to a change in the constitution and by having this agreement ratified by the people at an election for that purpose. On the other hand, statutory provisions may be amended or repealed at any session of the legislature; thus the law is subject to constant change.

Chapter 6, title 12, of the code, as amended, covers the subject of intoxicating liquors and prohibits the manufacture, sale or keeping for sale of intoxicating liquors within this state. However, our legislature has deemed it wise to make certain exceptions as to the sale, or keeping for sale, of intoxicating liquors and under certain restrictions intoxicating liquor may be sold for mechanical, pharmaceutical, medicinal, and sacramental purposes.

For many years the proposition was seriously argued that a state had no right to restrict or prohibit the sale or use of intoxicating liquors; that to do so would be in conflict with the rights guaranteed to each individual through the Bill of Rights and the Constitution of United States, but this theory is now completely overthrown. States in the exercise of their reserve police power have authority to absolutely prohibit the sale of intoxicating liquors or to make such regulation as they may deem necessary. *State vs. Delamater*, 20 S. D., 23; 104 N. W., 537; 8 L. R. A. (NS), 774, later approved by the supreme court of the United States in vol. 205, p. 93. The supreme court of the United States in the case of *Phillips vs. Mobile*, 208 U. S., 472; 52 L. Ed., 578, held that the sale of intoxicating liquor may be absolutely prohibited or the business may be controlled and regulated by the imposition of license taxes by which only those who obtain the license will be permitted to engage in it. Our own supreme court in the case of the *State vs. United States Express Company*, 164 Iowa, 112; 145 N. W., 451 held that there is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the state or of a citizen of the United States. As it is a business attended with danger to the community, it may, be entirely prohibited. or be permitted under such conditions as will limit to the utmost its

evils. The right of a state to prohibit the transportation of intoxicating liquor or to regulate it is now unquestioned in view of the case of Clark Distilling Company vs. Western Maryland Railway Company and State of West Virginia, decided by the supreme court of the United States on the 8th of January, 1917.

The following section is often spoken of as the prohibition statute of Iowa:

SECTION 2382, Supplemental Supplement, 1915, as amended by thirty-seventh general assembly, chap. 248. **Manufacture, sale or keeping for sale of intoxicating liquors prohibited.** "No one, by himself, clerk, servant, employe or agent, shall, for himself or any person else, directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of the statute or keep for sale, any intoxicating liquor, which term shall be construed to mean alcohol, ale, wine, beer, spirituous, vinous and malt liquor, and all intoxicating liquor whatever, except as provided in this chapter, or solicit, take, or accept any order for the purchase, sale, shipment, or delivery of any such liquor, or aid in the delivery and distribution of any intoxicating liquor so ordered or shipped, or own, keep, or be in any way concerned, engaged or employed in owning or keeping any intoxicating liquor with intent to violate any provision of this chapter, or authorize or permit the same to be done; and any clerk, servant, employe or agent engaged or aiding in any violation of this chapter shall be charged and convicted as principal. **And in case of a sale in which a shipment or delivery of such liquors is made by a common or other carrier, the sale thereof shall be deemed to be made in the county wherein the delivery thereof is made by such carrier to the consignee, his agent or employe.**"

Amendment effective July 4, 1917.

Special attention is directed to the provisions of the Reed "Bone-dry" Law. (U. S. Statute.) It not only prohibits the use of the United States mails for the circulating of liquor advertising matter in dry territory but further provides "*whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes,*" is subject to the penalties of the foregoing law which is set forth at length in this compilation.

The first thing to be determined in a prosecution for a violation of the above section is to ascertain whether or not the article manufactured, sold or kept for the purpose of sale is intoxicating liquor. In the case of State v. Colvin, 127 Iowa, 632; 103 N. W. 968 the Supreme Court held that proof that the liquor used as a beverage contained alcohol was sufficient to

establish its character as intoxicating liquor, however much the alcohol may have been diluted, or however weak its intoxicating effect as a beverage may be. Where the evidence showed that the beverage sold contained one and one-half per cent of alcohol by weight and two per cent by volume it was held error for the court to receive testimony attempting to prove the liquor was not intoxicating. *Idem*.

Any one selling a beverage is bound to know its character and whether or not it contains alcohol. See also *Nies et al. v. District Court*, Iowa,; 161 N. W. 317, and *Barber v. Buonanni Co.*, Iowa,; 161 N. W. 688. It is no defense to rely upon the representation of the manufacturers that it contains no alcohol. *Peters v. District Court*, 114 Iowa, 207; 86 N. W. 300.

It should be noted that the law not only prohibits the manufacture, sale or keeping for sale of intoxicating liquors but also prohibits anyone, "directly or indirectly, or upon any pretense, or by any device," from manufacturing, selling, exchanging, bartering, or dispensing it. In the case of *Sawyer v. Frank*, 152 Iowa, 341; 131 N. W. 761; also 132 N. W. 861, the Supreme Court approved of the definition of "dispense" as "to deal out, to apportion, to distribute. To dispense is to deal out generally or indiscriminately; to distribute, to deal out to, or divide among individuals."

The purpose and intent of this statute is to absolutely prohibit any and all traffic in intoxicating liquors. Even a registered pharmacist cannot sell alcohol for scientific purposes unless he is the holder of a permit. In re application of *Henery*, 124 Iowa, 358; 100 N. W. 43.

See "Bootlegger" for opinions relative to solicitation of orders for the sale or delivery of intoxicating liquor. For penalty for solicitation by common carrier engaged in interstate commerce see Sec. 239 of the Criminal Code of the United States.

The amendment added by the 37th G. A., Chap. 248, to the foregoing section has been patterned after an act of somewhat the same nature which appears on the statutes of West Virginia. There is this distinction, however, the Virginia statute makes the place of delivery the place of sale; the Iowa statute provides that "in case of a sale in which a shipment or delivery of such liquors is made by a common or other carrier, the sale thereof shall be deemed" to have been made at the place of delivery. The West Virginia statute was approved in the case of *West Virginia v. Adams Express Company*, 219 Fed., 794, and later approved by the Supreme Court of the United States in the case of *Clark Distilling Co. v. Western Maryland Co.*, and the state of West Virginia decided January 8, 1917.

SECTION 2383, Supplement, 1913. Penalty—Additional for second offense. "Whoever is found guilty of violating any of the provisions of the preceding section, (section 2382, supplemental supplement, 1915, as amended) for the first offense shall pay a fine of not less than fifty dollars nor more than two hundred dollars and cost of prosecution, and stand committed to the county jail until such fine and costs are paid; for the second and each subse-

quent offense he shall pay, upon conviction thereof, a fine of not less than three hundred dollars nor more than five hundred dollars and costs of prosecution, or he imprisoned in the county jail not to exceed one year."

Section 2383, Supplement, 1913, applies solely to violations of section 2382, Supplemental Supplement, 1915, as amended, and covers only cases where the accused has been found guilty in a criminal action of violating the provisions of the preceding section.

The attempt of the 36th G. A. to increase the penalty for being in contempt of court the second time for violation of an injunction was held unconstitutional in the case of *Flannigan v. Jepson*, Iowa,; 158 N. W. 641.

For the requisites of an indictment or information in any prosecution for a second or subsequent offense see sections 2424 and 2425, of the Code.

SEC. 2384 of the code. **What constitutes a nuisance—penalty—abatement—attorney's fee.** "Whoever shall erect, establish, continue or use any building, erection or place for any of the purposes herein prohibited, is guilty of a nuisance, and upon conviction shall pay a fine of not less than three hundred nor more than one thousand dollars and costs of prosecution, which shall include a reasonable attorney's fee to be taxed by the court, and stand committed to the county jail until such fine and costs are paid, and the building, erection or place, or the ground itself, in or upon which such unlawful manufacture or sale or keeping with intent to sell, use or give away said liquors is carried on or continued or exists, and the furniture, fixtures, vessels and contents, are also declared a nuisance, and in addition to the penalties hereinbefore affixed, shall be abated as hereinafter provided."

Traffic in intoxicating liquor in violation of the provisions of Sec. 2382, Supplemental Supplement, 1915, as amended, does not constitute a nuisance, unless the action complained of was done in connection with the use of some building or place. Whenever any of the prohibited acts are done in a building or place, the building or place becomes a nuisance, and whoever erects, establishes, or continues the use of any such building, erection or place for any of the purposes prohibited by that section is guilty of a distinct substantive crime, to-wit: the maintaining of a nuisance and may be convicted and punished therefore. *Hathaway v. Benton*, Iowa,; 154 N. W. 474. It is the *building or place* that constitutes the nuisance and not the person. If the person has no known or fixed place wherein he violates the law by selling, soliciting, etc., he should be dealt with as a "boot-legger" as provided for in Sec. 2461-a, Supplemental Supplement, 1915.

SEC. 2405, Supplemental Supplement, 1915. **Action to abate nuisance—Injunction—Contempt.** "Whenever a nuisance is kept,

maintained or exists, as defined in this chapter, any citizen of the county may maintain an action in equity to perpetually enjoin and abate the same. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court or judge, by evidence in the form of affidavits, depositions, oral testimony or otherwise, as the plaintiff may elect, unless the court or judge, by previous order, shall have directed the form and manner in which it shall be presented, that the nuisance complained of exists. Three days' notice in writing shall be given the defendant of the hearing of the application, and, if then continued at his instance, the writ as prayed shall be granted as a matter of course. When an injunction has been granted, it shall be binding on the defendant throughout the state, and any violation of the provisions of this chapter by manufacturing, selling or keeping for sale of intoxicating liquors anywhere *within the state* shall be punished as a contempt, as provided in this chapter."

In an action to abate a nuisance the plaintiff may ask for three different forms of relief:

(1) To enjoin a defendant from maintaining a nuisance in a particular place or any other place within the state. *Denmead v. Parker*, Judge, 145 Iowa, 581; 124 N. W. 780.

(2) He may ask that the *owner* of the property be enjoined from maintaining a nuisance on his premises or allowing the same to be maintained or conducted. *Fisher v. Sliph*, 154 Iowa 121; 134 N. W. 632.

(3) He may ask that the place itself, specifying it, be declared a nuisance and that all persons whosoever be enjoined from using said premises as a place for the unlawful keeping or traffic in intoxicating liquors. *Silvers v. Traverse*, 82 Iowa 52.

In order to tax costs against the property owner or against the property itself it is necessary that the property owner be made a party to the action. *Denmead v. Parker*, Judge, 145 Iowa 581. But the property itself may be declared a nuisance without the owner being made a party thereto. *Morgan v. Koestner*, 83 Iowa 135.

Where a defendant in an action to enjoin a liquor nuisance dies pending the appeal the action abates. 157 Iowa 382; 138 N. W. 466. Punishment cannot be imposed upon a dead man nor can penalties in such cases be imposed against his estate.

A petition to enjoin a nuisance may be in substantially the following form:

FORM.

Petition to Enjoin and Abate Nuisance.

Title,	}	Equity No.....
Venue.		Petition in Equity.

Par. I. This action is instituted and prosecuted in the name of (name of party plaintiff) for the abatement of a nuisance. The said (name of plaintiff) complaining of the defendants herein, shows to the court:

Par. II. That said (name of plaintiff) prosecutor, is now and for (insert number of years) years past has been an actual resident and citizen ofcounty, Iowa, and as such is interested in the peace, welfare and good order of the inhabitants of said county.

Par. III. That the defendant, (naming person keeping nuisance) in the county and state aforesaid has established and is operating, keeping, conducting and maintaining a building, situated on lot number..... in block number.....in the city of.....(or town), for the sale of intoxicating liquors in violation of law, and as a place for the keeping of such intoxicating liquors, with intent to sell, or dispense the same in violation of law.

Par. IV. That the defendant (naming owner) in the county and state aforesaid has been at all the times herein mentioned and is now the owner of the building and premises aforesaid wherein said liquor is being sold, dispensed or kept in violation of law as hereinafter stated.

Par. V. That on and after theday of....., 19...., and prior to the commencement of this action, the said defendant (naming him) did illegally sell intoxicating liquors, to-wit, whisky and brandy, at the place aforesaid, to the following named persons, viz.:

To.....on the.....day of....., 19....;
to.....on the.....day of....., 19....,
(here insert statement of all sales, or other violation of law relied on as basis for injunction), and to numerous other persons whose names are unknown to the prosecutor herein.

Par. VI. That the defendant (naming him) at the place aforesaid and from the.....day of....., 19...., until the.....day of....., 19...., has owned and kept in the building and on the premises aforesaid intoxicating liquors for the purpose, and with the intent on his part to sell or dispense the same therein contrary to law.

Par. VII. That unless restrained by this court, the said..... (keeper) will continue at said place to keep for sale, and to sell or dispense intoxicating liquors in violation of law, and that said..... (owner) will continue to allow said building and premises to be used for said illegal purposes; and that said building and premises will continue to be a nuisance to the irreparable injury of this plaintiff, this prosecutor, and the citizens of said county.

Wherefore plaintiff prays that said nuisance may be abated and said building effectually closed as provided by law; that said defendant (naming keeper) be enjoined by himself, agents or servants from in any manner soliciting, selling or dispensing intoxicating liquor in violation of law, or

keeping for sale with intent to sell or dispense in violation of law, any intoxicating liquor within this judicial district and within the State of Iowa; that said defendant (naming owner) be enjoined from allowing said building and premises to be used for any illegal keeping of, traffic in or dealing in intoxicating liquors; that said building and premises be decreed a nuisance and that all persons whosoever be enjoined from using said premises as a place for the unlawful keeping of or traffic in intoxicating liquors; that a temporary injunction issue in accordance with this prayer and that on final hearing said injunction be made perpetual, and for such other relief as may be deemed equitable in the premises, and for costs, including a reasonable attorney's fee.

.....
Attorney for Plaintiff.

(Add verification.)

FORM.

Order Fixing Date of Hearing for Temporary Injunction.

The hearing of the application of the plaintiff herein for a temporary injunction is hereby fixed for the.....day of....., 19...., atM., o'clock, at the Court House in.....county, State of Iowa.

.....
Judge.

Notice of the hearing of the application for temporary injunction may be incorporated in the original notice which should be in substantially the following form:

FORM.

Original Notice.

In the District Court of the State of Iowa in and for.....County.

.....	} Original Notice and Notice of Hearing of Application for Temporary Injunction.
Plaintiff,	
vs.	
.....	
Defendant.	

To

You are each hereby notified that there is now on file in the office of the Clerk of the District Court of Iowa in and for.....County, the petition of the plaintiff in the above entitled cause, alleging that the following described premises, to-wit (describe accurately):.....

.....
and the buildings and erections thereon, together with the furniture and fixtures therein, constitute a nuisance by reason of the fact that the same are kept and maintained by you as a place for the sale, dispensing, and keeping for sale of intoxicating liquors contrary to law; said petition asks for the abatement of said nuisance and that you be enjoined and restrained from selling, dispensing or keeping for sale any intoxicating liquors within said buildings or on said premises or elsewhere within the..... Judicial District or within the State of Iowa, and for general equitable relief. For further particulars see said petition.

You are further notified that unless you appear in said cause on or before noon of the second day of the next term of said court, to be begun and

held at the court house in.....County, Iowa, commencing on the.....day of....., A. D. 19...., default will be entered against you and a decree entered for the abatement of said nuisances, and enjoining and restraining you as prayed in said petition.

And you are further notified that said petition prays for the issuance of a temporary injunction and that by an order of one of the Judges of said court the time for hearing on the application for the temporary injunction has been fixed for the.....day of....., 19...., at..... o'clock ... m., before the....., one of the Judges of said court, said hearing to be had at the court house in said county, at which time you are at liberty to appear and show cause, if any, why said temporary injunction should not issue.

.....
Attorneys for the Plaintiff.

SEC. 2406, Supplement, 1913. **How brought and tried—evidence—attorney's fee—investigation by county attorney—report.** "Actions to enjoin nuisances may be brought in the name of the state by the county attorney, who shall prosecute the same to judgment, or any citizen of the proper county may institute and maintain such proceeding in his name. The action when brought shall be triable at the first term of court after due and timely service of notice of the commencement thereof has been given; and in such action evidence of the general reputation of the place described in the petition shall be admissible for the purpose of proving the existence of such nuisance. If the plaintiff is successful in the action, an attorney's fee of twenty-five dollars shall be taxed as costs in his favor."

"Such action, when brought by a citizen, shall not be dismissed upon the motion of either the plaintiff or defendant until the county attorney shall have been notified in writing of the filing of such motion, and until such county attorney shall have made a personal investigation of the place of business sought to be enjoined, and of all matters set forth in said motion for dismissal, and shall have filed, in writing, a report of his findings in said cause, and his recommendation in reference to the disposition of the same. If any such action shall remain upon the docket for two terms of court, without trial, it shall be the duty of the judge of such court to order the plaintiff and his attorney or attorneys of record, to appear in open court for examination as to the reasons why such cause has not been brought on for trial; and it shall be the duty of the county attorney to conduct such examination, if the judge shall so order. Whenever the court shall have reason to believe that any action commenced under this section has not

been brought or prosecuted in good faith said court shall direct the grand jury to investigate all the facts and circumstances connected with the bringing and prosecution of the same."

The preceding section fixes definitely the amount of attorney fees to be taxed against the defendant and in favor of the plaintiff if the plaintiff is successful in an action to enjoin a nuisance. *Carter v. Bartel*, 110 Iowa 211; 81 N. W. 462. It should be noted that the fee should be taxed in favor of the *plaintiff* and not his attorney. *Root v. Heil*, 78 Iowa 436. In contempt proceedings the court may allow the attorney prosecuting such cause a reasonable attorney fee. See 2429 of the Code. The court in fixing the amount of the fee to be allowed an attorney in contempt proceedings is not bound by the sum fixed in the section above set out. *Lingelbach v. Hobson*, Judge, 130 Iowa 488; 107 N. W. 168.

To be "successful" in an action so as to be entitled to have an attorney fee taxed as costs it is essential that a decree issue enjoining the maintenance of the nuisance. Mere surrender of permit and agreement to pay the cost of the action does not entitle the plaintiff to have attorney fees taxed against the defendant. *Batten v. Bengel*, 162 Iowa 280; 144 N. W. 37.

While the county attorney is given limited authority in actions brought by private citizens to enjoin nuisances yet he cannot move to dismiss the suit over the objection of the plaintiff. *Batten v. Snearly Bros.*, 168 Iowa 362; 150 N. W. 583.

SEC. 2429, of the code. **Attorney's fees.** "In all actions in equity against persons charged with keeping a nuisance, and to abate the same, and all proceedings for a contempt for violating any injunction, temporary or permanent, issued or decreed therein, the court or judge before whom the same shall be heard and determined shall allow the attorney prosecuting such cause a reasonable sum for his services, and in case a fine shall be assessed, he shall be allowed ten per cent. of the fine collected."

See notation following Section 2406, Supplement, 1913, as it appears in this compilation.

The ten per cent. of the fine, in addition to the attorney fee allowed to the attorney prosecuting the case, can be recovered only when the fine has been paid; hence where the fine is remitted by the Governor the attorney prosecuting the action cannot recover the ten per cent. *McConkie v. Landt*, 126 Iowa 317; 101 N. W. 1121. The ten per cent. here allowed is regarded as compensation for collecting the fine. *Brennan v. Roberts*, 125 Iowa 615; 101 N. W. 460. The attorney is also entitled to this per cent. where the abatement of the nuisance follows as an incident to a conviction in the criminal court for maintaining a nuisance. *Story County v. Hansen*, Iowa; 159 N. W. 1000.

SEC. 2407 of the code. **Violation of injunction.** "In case of the violation of any injunction granted under the provisions of this chapter, the court, or in vacation a judge thereof, may summarily

try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment."

An attempt was made to amend this section by the 36th G. A. by adding thereto a provision "for the first offense" he should be punished as provided in the above section and for the "second offense" the proposed amendment provided that:

"A party who, having once been found guilty of contempt for violating the provisions of any such injunction, shall for each such subsequent violation be punished by a fine of not less than five hundred dollars or more than one thousand dollars or by imprisonment in the state penitentiary or state reformatory at hard labor for not more than one year."

Our Supreme Court in the case of Flannigan v. Jepson, Iowa; 158 N. W. 641, held the amendments to be in violation of Art. 1, Sec. 23, of the Constitution of Iowa, and that the law as it appeared in Sec. 2407 of the Code to be in force unmodified by these amendments.

There is no appeal from a conviction for contempt. Flannigan v. Jepson, Iowa; 158 N. W. 641. The only method of review by the Supreme Court is by Certiorari. Tuttle v. Hutchinson, 173 Iowa 503; 151 N. W. 845.

Petition to cite for contempt of court may be substantially the following form:

FORM.

Petition to Cite for Contempt of Court.

In the District Court of the State of Iowa in and for.....County.
.....Term, A. D. 19....

The State of Iowa, ex rel

.....	} Plaintiff,
vs.	
.....	
	} Defendant.

Now comes....., relator, and to the court states:

That on the.....day of....., 19...., the above named defendant, in an action entitled.....vs.....
....., Equity No....., was enjoined by the District Court of the State of Iowa in and for.....County, from directly or indirectly keeping, operating, maintaining or conducting a liquor nuisance

at (describe location) or at any other place within the said..... judicial district of Iowa, and in the State of Iowa.

That the said defendant on the.....day of....., 19...., did, in violation of said injunction, offer for sale and sell certain intoxicating liquor to one (name person) and to other persons to this relator unknown. (If facts constituting violation are different from above, state them.)

Wherefore, this relator prays that said defendant be cited to appear before this court and show cause why he should not be adjudged in contempt of this court.

(Add verification.)

Relator.

Warrant for contempt should be in substantially the following form.

FORM.

Warrant for Contempt.

STATE OF IOWA,

.....County,

} ss.

To any Peace Officer in the State:

A petition having been filed in the District Court of said county on theday of....., 19...., charging (name of defendant) with contempt of court by violating an injunction heretofore issued by (name of court), in an action entitled..... vs., Equity No....., you are therefore hereby commanded to arrest the said (name of defendant) and bring him before said Court to answer said charge on the.....day of....., 19...., at.....o'clock....M., and you may deliver him into the custody of the sheriff of said county until said hearing.

Given under my hand and seal of said Court affixed at my office in in the county aforesaid, this.....day of 19....

By order of the Judge of said Court.

.....Clerk.

By..... Deputy.

Let the defendant be admitted to bail in the sum of \$....., if he desires to give bail.

SEC. 2408 of code. **Abatement of nuisance.** "If the existence of the nuisance be established in a civil or criminal action, an order of abatement shall be entered as a part of the judgment in the case; which order shall direct the destruction of the liquor, the removal from the building or place of all fixtures, furniture, vessels or movable property used in any way in conducting the unlawful business and sale thereof, in the manner provided for the sale of chattels under execution, and the effectual closing of the building, erection or place against its use for any purpose prohibited in this chapter, and so keeping it for a period of one year, unless sooner released. If any one shall break or use a building or place so directed to be closed, he shall be punished as for contempt as provided in the preceding section. (Section 2407 of the code.) For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court."

See also Sec. 5447 of the Code relative to the abatement of a nuisance.

If the existence of a nuisance be established in either a civil or criminal action it is the duty of the county attorney to see that the liquor mulct tax is assessed against the property. See Sec. 2446 of the Code. Such assessment is not to be made merely for the current quarter but for the full length of time said property has been used for purposes rendering it liable for the mulct tax. The person and property is subject to the tax from the time business is commenced. *O'Brien County v. Mahon*, 126 Iowa 539; 102 N. W. 446.

It should be noted that the foregoing section expressly provides that "if the existence of a nuisance be established in a civil or criminal action an order of abatement shall be entered as a part of the judgment in the case;" and when the fact of the existence of a nuisance has been established it is error for the court to refuse to provide in the decree for the abatement of the nuisance. *McClure v. Braniff*, 75 Iowa 38.

Further, the order of abatement should direct the "effectual closing of the building, erection or place" constituting the nuisance, and this is true although the owner of the premises had no notice or knowledge of the unlawful use of the property. *State v. Knapp et al.*, Iowa; 158 N. W. 515.

The existence of the nuisance being established a decree as provided for by section 2408 *must* be entered, unless the action has been abated by the owner giving bond and paying costs before judgment and order of abatement as provided for in Sec. 2410. *McCoy v. Clark*, 109 Iowa 464; 80 N. W. 538.

The exclusive remedy for the owner in such cases is provided for in Sec. 2410 of the Code. If it should appear from the testimony that the

owner of the property had knowledge of the illegal use of the same it is proper to tax the costs of the proceedings against him, otherwise the costs should not be thus taxed. *Morgan v. Koestner*, 83 Iowa 134; 49 N. W. 80.

Many decrees are being drawn which do not enjoin either the property owner or the property itself, nor do many call for an abatement of the nuisance as required by law. The following form may be used to cover these omissions.

FORM OF DECREE FOR INJUNCTION AND ABATEMENT
OF NUISANCE.

Title,	}	DECREE.
Venue.		

BE IT REMEMBERED, That on this.....day of....., 19...., the above entitled cause comes on for hearing and trial in open court; the plaintiff appearing in person and by (name of his attorney), his attorney, and defendants appearing in person and by their attorneys (naming them); and the court after inspecting the original notice and pleadings, and after hearing the evidence duly presented in said cause, and the argument of counsels, finds:

That said defendants and each of them have been duly served with timely notice of the filing of this action, and that said defendants and each of them, and the subject matter of said cause is within the jurisdiction of this court; that the evidence presented at said trial established the fact that said defendant (naming him) has been engaged in the unlawful sale or dispensing of intoxicating liquor (state facts, if sale or dispensing has not been made in violation of law) in a building or place situated on lot number.....in block number.....in the city of..... (or town)County and State of Iowa; that said defendant (naming owner) is owner of said premises; that said building and premises has been and is used as a place where intoxicating liquors are kept, sold or dispensed in violation of law, or are kept with intent to be sold or dispensed in violation of law, and that said building and premises constitute a nuisance; that the equities are with the plaintiff and that he is entitled to the relief prayed for in his said petition.

Wherefore, it is ordered, decreed and adjudged that the defendant (naming keeper) be and is hereby perpetually and permanently enjoined from directly or indirectly conducting, continuing or maintaining a nuisance at (specify location) and from directly or indirectly soliciting, selling, dispensing or keeping intoxicating liquor, or keeping with intent to sell or dispense, any intoxicating liquor anywhere in the.....judicial district and in the State of Iowa in violation of law; and that said defendant (naming owner) be and hereby is perpetually and permanently enjoined from maintaining or allowing a nuisance to be maintained on his aforesaid premises or in any building or erection thereon; that said building, erection and premises be and hereby is decreed and adjudged to be a nuisance and that all persons whomsoever be perpetually and permanently

enjoined from using said building, erection or premises as a place for the unlawful keeping of, or traffic in intoxicating liquors.

It is further ordered, adjudged and decreed that the sheriff of saidcounty be and he is hereby ordered to abate said nuisance by the destruction of all liquors heretofore seized therein, or now kept or stored therein, and that he remove from said building or erections all fixtures, furniture, vessels or movable property used in any way in conducting said unlawful nuisance and sell the same as required by law; and that said sheriff effectually close said building, erection or place against all use whatsoever for a period of one year, and that he keep the same effectually closed for said period unless sooner released as provided by law.

It is further ordered, adjudged and decreed that the plaintiff have judgment against the defendants for the costs of this action taxed at..... dollars, including the sum of.....dollars as attorney fees, the same to be taxed as part of the costs of said action.

Done in open court this.....day of....., 19....

.....
Judge.

Sec. 2410, Supplement, 1913. **Abatement by owner.** "If the owner appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, or in vacation, by the clerk, auditor and treasurer of the county, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation, the judge, may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement cancelled so far as the same may relate to said property; and if the proceeding be an action in equity, and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law."

The filing of the bond by the owner, and the payment of costs before judgment does not abate the nuisance but abates the *action* itself in so far as it relates to the building. The bond provides and guarantees abatement of the nuisance by the owner. *Morris v. Connolly*, 113 Iowa 545; 85 N. W. 789.

There is no authority for decreeing that the building shall be closed so far as the sale of liquor is concerned and at the same time allow it to be used for other lawful purposes. It is only on the giving of the bond that

the building is to be used for other purposes. *Lewis v. Brennan*, 141 Iowa 585; 120 N. W. 332.

Sec. 2422, of the Code, declares fines, mulct taxes, etc., to be a lien on the property.

SEC. 2409 of code. **Proceeds—how applied.** “The proceeds of the sale of the personal property, as provided in the preceding section (section 2408 of the code), shall be applied, first, in payment of the costs of the action and abatement; secondly, to the satisfaction of any fine and costs adjudged against the proprietor of the premises and keeper of said nuisance, and the balance, if any, shall be paid the defendant.”

SEC. 2412 of code. **Prepayment of fees not required—costs taxed to plaintiff.** “In an action brought by a citizen to enjoin a nuisance, as defined in this chapter, no officer or witness shall be entitled to receive in advance fees for service or attendance. If the prosecution fails, or the costs cannot be collected of the defendant, they shall be paid in the same manner as in criminal causes. If, however, the court shall find that the case was commenced without probable cause, or was maliciously brought, it may tax the costs to the plaintiff.”

It has been held under this section that the clerk has no right to demand his fees for the transcript in advance. *Searles v. Lux*, 86 Iowa 61. His fees are all provided for as in criminal cases.

LAWS RELATING TO PERMITS AND PERMIT HOLDERS

The law makes provision for limited traffic in intoxicating liquors. Each person, firm or corporation desiring to engage in the sale of intoxicating liquors must secure a permit from the district court for that purpose and give bond for faithful compliance of the law regulating the business.

There are three kinds of permits:

- (1) to sell liquor at retail;
- (2) a permit to sell at wholesale;
- (3) permit authorizing certain manufacturers to purchase, transport and possess liquors for manufacturing purposes.

The subjects are taken up in the order above mentioned.

The law of Iowa as it now stands absolutely prohibits all dealings in malt liquors. Even the possessor of a permit has no authority to have in his possession or to dispense in any manner malt liquor.

RETAIL PERMITS.

SEC. 2383-a, Supplement, 1913. **Retail permit holder must be qualified elector.** "No one except a qualified elector of the town, city or township in which the business is conducted and carried on shall engage in the sale of intoxicating liquors at retail."

Since a woman is not a qualified elector according to the laws of Iowa she is prohibited from being a permit holder, even though she may be a registered pharmacist. In re Application of Carragher; 149 Iowa 225; 128 N. W. 352. A corporation is not an elector and therefore cannot be a retail permit holder..

SEC. 2383-b, Supplement, 1913. **Brewers, distillers and others prohibited from selling or being interested in sale.** "No person, firm, association or corporation and no officer, member, stockholder, agent or employe of any such firm, association or corporation engaged in the manufacture, brewing, distilling or refining of intoxicating liquors shall be interested or engaged, either directly or indirectly, in the retail sale of intoxicating liquors, or own, operate or lease any building, erection or place to be used for the sale or keeping for sale of intoxicating liquors at retail, or own or lease or be interested in, either directly or indirectly, any fixtures, furniture, or apparatus to be used in the retail sale of intoxicating liquors, or furnish the license bond required by law or pay for such bond or guarantee the bond of such person engaging in the sale of intoxicating liquors contrary to the conditions above prohibited shall be punished as in section three (section 2383-c supplement, 1913) provided."

SEC. 2383-c, Supplement, 1913. **Penalty for violation.** "Any person, firm, association or corporation, or any agent or officer of such firm, association or corporation, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be liable to all of the penalties, both civil and criminal, provided in chapter six, title twelve of the code, the supplement to the code, 1907, and amendments thereto."

While the three preceding sections were enacted when saloons were permitted to operate yet the sections have been held to apply with equal force to permit holders as they engage in the sale of intoxicating liquors at retail. In re application of Carragher, 149 Iowa 225; 128 NW. 352.

SEC. 2383-d, Supplement, 1913. **Acts in conflict repealed.** "All acts and parts of acts, in so far as they are in conflict with this act, are hereby repealed."

SEC. 2387 of code. **Application for permit.** "All applications for a permit to sell intoxicating liquors for the purposes allowed in this chapter shall be by petition, signed and sworn to by the applicant, and filed in the office of the clerk of the district or superior court of the county or city in which the buying and selling is to be carried on, at least ten days before the term at which the matter is to be for trial, which petition shall set out the name of the applicant, his residence and business and that for the two previous years, the place, particular describing it, where the business is to be conducted, that he is a citizen of the United States and of this state, that he is a registered pharmacist, that now and for the six months last past he has been lawfully conducting a pharmacy in the township, town or city wherein he proposes to engage in the business under the permit applied for, that he has not been adjudged guilty of any violation of the law relating to intoxicating liquors within the two years next preceding the making of his application, is not the keeper of a hotel, eating house, saloon, restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage, and desires a permit to buy, keep and sell liquors for lawful purposes only. If the applicant has previously held a permit which has been revoked, his petition, in addition to the foregoing requirements, shall state that he has not, within the last two years next before making the application, knowingly been engaged, employed or interested in the unlawful manufacture, sale or keeping with intent to sell of intoxicating liquors."

Before a permit can properly issue it is indispensable that the applicant allege and show that he is, and for six months prior to the date of the hearing has been, lawfully conducting a pharmacy in the city or town where he purposes to use such permit. The fact of one unlawful sale of liquor regardless of the intended purpose for which it was sold is sufficient to be ground for denying him a permit.' In re applications of Henry, 124 Iowa 358; 100 NW. 43. The selling of ice cream and soda water in a drug store does not bring the proprietor within the prohibition of the law denying permits to keepers of eating houses and restaurants. *idem*.

SEC. 2388, Supplement, 1913. **Notice of application for permit.** "Notice of an application for a permit must be published, once each week, for three consecutive weeks in a newspaper regularly published and printed in the English language, and of general circulation in the township, town or city where the applicant proposes to conduct the business, or, if none be regularly published therein, then in one of the papers selected by the board of super-

visors for the publication of its proceedings, the last publication of which shall be not less than ten nor more than twenty days before the first day of the term at which the hearing is to be had. This notice shall state the name of the applicant, with the firm name, if any, under which he is doing business, the purpose of the application, the particular location of the place where the proposed business is to be carried on, and that the required petition is or will be on file in the clerk's office of the court (naming it) at least ten days before the first day of the term (naming it) when the application will be made. A copy of such notice shall be served upon the county attorney in the same manner and for the same length of time as is required of original notices in said courts."

SEC. 2389 of the code. **Hearing—remonstrances—on application for permit.** "Upon the return day of the notice, the court having, from an inspection of the record, ascertained that due and timely service thereof has been made, shall, if no remonstrance has been or is offered to be filed, unless for cause postponed to some other day in the term, proceed to hear and try the application. Any remonstrance against or objection to the granting of the permit must be in writing and filed in the clerk's office by noon of the first day of the term, unless further time be given, and shall be so filed before the date fixed for the trial. Such remonstrance or objections may be made by any citizen of the county wherein the application is made, specifically stating the reasons therefor, and the court shall fix a day in the term for the trial, and all applications shall be tried at the first term after completed service has been made of the required notice, if the business of the court shall allow. No permit shall be granted unless the court shall find from competent evidence that all the averments in the petition are true, that the reasonable convenience and necessities of the people, considering the population and all the surroundings, make the granting of the permit proper, and that the applicant is possessed of the character and qualifications required, worthy of the trust to be reposed in him, and likely to discharge the same with fidelity. The county attorney shall appear in such cases, and any number of persons, not less than five, filing any remonstrance or objection, may also appear by counsel and resist the application. If more than one permit is applied for in the same locality, the applications shall be heard at the same time, unless for cause shown it be otherwise ordered. If for any reason the application can not be tried in term time, the same may be heard by the judge in vacation, at a

time to be fixed by the court and made of record, and in all applications for permits the court may grant or refuse any or all applications, as will best subserve the public good."

It is necessary that both the application for a permit and the notice provided for by the preceding section contain a particular description of the location where the business is to be conducted. *Muncey v. Collins*, 132 Iowa 50; 106 NW. 262. By filing remonstrance or objection to the granting of a permit, the citizen who files it becomes a party to the proceeding and may appeal from a decision of the court granting the applicant a permit. In re application of Smith, 126 Iowa 128; 101 NW. 875.

SEC. 2391 of the code. Oath of applicant. "In addition to giving the bond required, the applicant shall take and subscribe the following oath, which shall be indorsed upon the bond: "I....
.....do solemnly swear (or affirm) that I will well and truly perform all and singular the conditons of the within bond, and keep and perform the trust confided in me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than as provided by law, and especially I will not sell or furnish any intoxicating liquors to any person who is not known to me personally, or duly identified, nor to any minor, intoxicated person, or persons who are in the habit of becoming intoxicated; and I will make true, full and accurate returns of all certificates and requests made to or received by me as required by law; and said returns shall show every sale and delivery of such liquors made by me, or for me, during the months embraced therein, and the true signature to every request received and granted; and such returns shall show all the intoxicating liquors sold or delivered to any and every person, as returned.' "

SEC. 2390 of the code. Bond—to be recorded. "No permit shall issue until the applicant shall execute to the state a bond in the penal sum of one thousand dollars, with good and sufficient sureties to be approved by the clerk of the court, conditioned that he will well and truly observe and obey the laws of the state now or hereafter in force in relation to the sale of intoxicating liquors, that he will pay all fines, penalties, damages and costs that may be assessed or recovered against him for a violation of such laws during the time for which the permit is granted, and the principal and sureties in said bond shall be liable thereon, jointly and severally, for all civil damages and costs that may be recovered against the principal in any action brought by a wife, child, parent, guardian, employer or other person under the provisions of this chapter.

The bond, after being approved by the clerk, shall be deposited with the county auditor, and suit may be brought thereon at any time by the county attorney, or by any person for whose benefit the same is given. The clear proceeds of all other money which may be collected for breaches of the bond shall go to the school fund of the county. If at any time the sureties on the bond shall file with the court or clerk a written request for release, or become insolvent, or be deemed insufficient by the court granting the permit, or its clerk, such court or clerk shall require a new bond to be executed within a reasonable time to be fixed. If the permit holder fails or neglects to furnish a new bond within the time so fixed, the permit shall from that date become null and void."

Sales of intoxicating liquor made elsewhere than in the place specified in the permit, while the permit holder continues business in such place, constitutes a breach of the condition in his bond, if his base of supply is at his place of business. *Carter v. Nicol*, 116 Iowa 519; 90 NW. 352.

See also Sec. 2392, Supplement, 1913, for the law in case the permit holder desires to move to another location.

SEC. 2392 of the Supplement, 1913. **Issuing of permit—conditions.** "Upon taking said oath and filing said bond, the clerk of the court granting the same shall issue a permit to the applicant, authorizing him to keep and sell intoxicating liquors as in this chapter provided. The permit so issued shall specify the building, give the street and number or location in which intoxicating liquors may be sold by virtue of the same, and the length of time the same shall be in force, unless sooner revoked. Provided that upon the expiration of the lease or destruction of the building where such business is conducted, or for other good and sufficient cause shown, consent in writing of the bondsmen having been obtained therefor, or a new bond given, the district court of the county which granted said permit, or a judge of said court, may change the place specified in said permit to some other place in the same city, town, or township upon motion therefor. A copy of said motion, and notice of the time when and the place where the same will be heard, shall be given to the county attorney of the county where said place is situated, at least five days before said hearing."

Sec. 2385 of the Code states the purposes for which intoxicating liquor may be sold.

There are three important things that should be observed in the granting of every permit:

1. That the permit specify definitely the length of time it is to run.
 2. That it specify definitely the place where the intoxicating liquor is to be sold.

3. That the bond of the permit holder be signed by *sureties* and not by a *surety*; the only exception to this being where the surety is a bond company authorized to transact business within the state of Iowa. No person engaged in brewing, distilling or refining intoxicating liquor nor stockholder or agent of such concern can be a surety on a permit holder's bond. See Sec. 2383-b, Supplement, 1913.

And another very important matter is that upon the expiration of the lease or the destruction of the building where the business is conducted, it is essential that the permit holder obtain a new bond. The change of location necessitates a modification of the order granting the permit.

The following form for the issuance of a retail permit may be used:

FORM.

Retail Liquor Permit.

In the District Court of the State of Iowa in and for.....County.
 In re Application of..... Equity No.
for a Retail Liquor Permit. Permit.

Whereas,, a registered pharmacist of the State of Iowa holding pharmacist's certificate No....., now in full force and effect, doing business at (describe location) in.....county and State of Iowa, under the firm name of.....did on the.....day of....., 19...., file in the office of the clerk of said District Court his application for a retail liquor permit as a registered pharmacist for the purposes authorized by the laws of the State of Iowa; and,

Whereas, the said application and notice thereof were found by the court to conform to the laws of the State of Iowa; and,

Whereas, the Court granted an order authorizing said applicant to buy, keep, sell and dispense intoxicating liquors for the purposes authorized by the laws of the State of Iowa; and,

Whereas, said applicant has filed a good and sufficient bond in the penal sum of \$1,000.00 and has made and filed the oath required by law:

Now therefore, In accordance with said application and order of Court aforesaid, it is hereby ordered that the said....., applicant herein, be and is hereby authorized to buy, keep for sale, sell and dispense intoxicating liquors, not including malt liquors, for pharmaceutical and medical purposes, and to permit holders for use and resale by them, and to sell and dispense alcohol for specified chemical and mechanical purposes, and wine for sacramental use as authorized by law, but for no other purpose whatsoever, on the following described premises..... (describe accurately).....said premises being locally known as No.....in the city of..... in the county of.....and State of Iowa, for a period of.....months from the.....day of

....., 19...., provided his certificate as a registered pharmacist shall remain in full force and effect, and until this permit is revoked as by law provided.

In witness whereof, I,, clerk of the District Court of the State of Iowa, in and for.....county, have hereunto affixed my signature and the seal of said District Court, at....., Iowa, on this.....day of..... 19....

.....
Clerk of the District Court of

County, Iowa.

By.....Deputy.

SEC. 2393, Supplement, 1913. Clerk to keep record of proceeding to secure permit—applicant to pay all costs. “The clerk of the court granting the permit shall preserve as a part of the record and files in his office all petitions and other papers except bonds pertaining to the granting or revocation of permits, and keep suitable books in which bonds and permits shall be recorded. The books shall be furnished by the county like other public records. Whether said permit be granted or refused, the applicant shall pay the costs incurred in the case, and, when granted, he shall make payment before any permit issue, except the court may tax the cost of any witnesses summoned by private persons resisting said application, and the fees for serving such subpoenas, to such persons, when it is shown that such witnesses were summoned maliciously, or without probable cause to believe their evidence material. The fees in such cases shall be as provided in actions at law in the district court.”

SEC. 2385 of the code. The uses for which a permit holder may sell intoxicating liquor. “Persons holding permits may sell and dispense intoxicating liquors, not including malt liquors for pharmaceutical and medical purposes, and to permit holders for use and resale by them, only for the purposes authorized in this chapter; they may also sell and dispense alcohol for specified chemical and mechanical purposes, and wine for sacramental uses. Registered pharmacists, physicians holding certificates from the state board of medical examiners and manufacturers of proprietary medicines may buy from permit holders intoxicating liquors (not including malt) for the purpose of compounding medicines, tinctures and extracts that cannot be used as a beverage, but nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form or device, which may be used as a beverage, and which is intoxicating in its character.”

See the annotations following Sec. 2394, Supplement, 1913, as they appear in this compilation.

While a retail permit holder is given authority to *sell* intoxicating liquor as provided above, yet he cannot *transport* it to anyone except to those provided in section 2396 of the Code.

SEC. 2394, Supplement, 1913. Requests to purchase--blanks—who must fill in. “Before selling or delivering any intoxicating liquors to any person, a request must be signed by the applicant, in his true name, truly dated, stating the applicant is not a minor, his residence, for whom and whose use the liquor is required, and his true name and residence, and, where numbered, by street and number if in a city, the amount and kind required, the actual purpose for which the request is made, and for what use desired, and that neither the applicant nor the person for whose use requested habitually uses intoxicating liquors as a beverage, and attested by the permit holder who received and fills the request. The blanks for such request shall, with proper stubs, in all cases, be printed in book form and shall be furnished to the permit holder by the county auditor of the county in which such permit is in force, and shall contain, in addition to the matter provided for in said section, the facsimile signature of the county auditor; and both the stub and the request shall be numbered consecutively. Such blank requests with stubs, shall be furnished the permit holder applying therefor upon payment by him to the county auditor of the actual cost of printing the same. Such blank requests and the corresponding stubs shall be filled out by the person making the sale in ink, and in the presence of the applicant for such liquors and prior to the applicant's signature thereof. The line between the request and its corresponding stub shall be perforated. The permit holder shall be required to preserve the stubs in book form and shall keep them at all times subject to the inspection of the commissioners of pharmacy, the county attorney, any grand juror, sheriff or justice of the peace in the county in which such permit is in force. The blank form of request and stub shall be as follows:

No.....
190..
 Purchaser
 Address
 Purchase
 For whom
 Address
 Certifier
 Address

(Official form E—Series B.)

CERTIFIED REQUEST OF PURCHASERS.

No....., Iowa,190
 To.....Reg. Phar. No.....

I hereby make request for the purchase of the following intoxicating liquors:

Amount.

Kind.

.....
.....

My true name is..... I am not a minor, and reside in.....township (or town) of..... at No.....in the county of....., state of.....The actual purpose for which this request is made is to obtain the said liquor for.....and the same is desired for.....use, and neither myself nor the said.....habitually use intoxicating liquors as a beverage. If the applicant is unknown to the permit holder the blank below shall also be filled out and signed by a witness.

Signature of purchaser.....

I,hereby certify that I am acquainted with....., the applicant for the purchase of the foregoing described liquors, and that said.....is not a minor and is not in the habit of using intoxicating liquors, as a beverage, and is worthy of credit as to the truthfulness of the statements in the foregoing request, and my residence is....., No.....street.....

(Signature of certifier).....

Attested by.....Reg. Phar. No.....

“The request shall be refused unless the permit holder has reason to believe the statement to be true, and in no case granted unless the permit holder filling it personally knows the person applying is not a minor, intoxicated, nor in the habit of using intoxicating liquors as a beverage; or, if the applicant is not so personally known, before filling the order or delivering the liquor, he shall require identification, and the statement in writing of a reliable and trustworthy person, of good character and habits, known personally to him, that the applicant is not a minor, nor in the habit of using intoxicating liquors as a beverage, and is worthy of credit as to the truthfulness of the statements in the application; and this statement so made shall be signed by the witness in his own name, stating his residence correctly.”

One who sells intoxicating liquor in this state does so at his peril and he must see that all the provisions authorizing its sale are complied with. The law is prohibitive, and the wrong is *malum in se*; hence no criminal intent need be shown other than the failure to comply with its provisions. *Milheiser v. Gandrup*, Iowa; 146 NW. 843. Therefore a permit holder making a sale of intoxicating liquor, must at his peril see that the request is properly filled out; and this must be done in the hand writing of the applicant, in ink. *Smith v. Foster*, 153 Iowa 664; 134 NW. 93.

A sale of intoxicating liquor for chemical or mechanical purposes must definitely state the particular chemical or mechanical use for which the intoxicating liquor is to be used. A sale made on a request for alcohol for "mechanical use" is therefore unlawful. *Smith v. Foster*; *supra*. If the sale is made for pharmaceutical or medical purposes it is not necessary to state specifically the use for which the liquor has been purchased. *State v. Swallum*, 111 Iowa 37; 82 NW. 439.

Any permit holder selling intoxicating liquors as a beverage is subject to the mulct tax provided for in Sec. 2432 of the Code.

SEC. 2395 of the code. **Penalties—making false statement.** "If any person shall make any false or fictitious signature, or sign any name other than his own to any paper required to be signed, or make any false statement in any paper or application signed to procure liquors, the person so offending shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars and costs of prosecution, and shall be committed until said fine and costs are paid, or shall be imprisoned not less than ten nor more than thirty days. If any permit holder or his clerk shall make false oath touching any matter required to be sworn to, the person so offending shall be punished as provided by law for perjury. If any person holding a permit under this chapter shall purchase or procure any intoxicating liquor otherwise than as herein authorized, or make any false return to the county auditor, or use any request for liquors for more than one sale, he shall be guilty of a misdemeanor and punished accordingly."

One convicted of perjury is to be punished by imprisonment in the penitentiary for a period of not more than ten years. Sec. 4872 of the Code.

SEC. 2386, Supplement, 1913. **Penalty for unlawful disposition of intoxicating liquors by pharmacists and manufacturers of proprietary medicines.** "If any such registered pharmacist or manufacturer of proprietary medicines shall sell, barter, give, exchange, dispose of or use intoxicating liquors in any manner or for any purpose other than authorized in the preceding section, he shall be liable to all the penalties and proceedings provided for in this

chapter, and upon proof of such violation by a registered pharmacist, the clerk of the district or superior court shall transmit to the commissioners of pharmacy a certified copy of the record thereof within ten days after its entry, and upon receipt of such certified copy said commissioner may strike his name from the list of registered pharmacists and cancel his certificate. The commissioners of pharmacy are empowered to make such further rules and regulations, not inconsistent with law, with respect to the purchase, keeping and use of intoxicating liquors by registered pharmacists and manufacturers of proprietary medicines, as they shall think proper to prevent abuses of the privilege, and shall revoke the certificate of registration of any pharmacist for repeated violation of this chapter. Said commissioners are authorized to draw from the state treasury an amount not exceeding fifty per cent. of the clear proceeds of all fees collected and paid into the treasury of any county on account of violations of the provisions of this chapter or the chapter regulating the practice of pharmacy, prosecuted by the commissioners, the amounts so drawn to be used solely in prosecutions instituted by them for failure to comply with the provisions of such chapters. The court or clerk thereof, before whom any prosecution is instituted or prosecuted by the commissioners of pharmacy, shall certify to the auditor of state all such cases, and the amount of fees imposed and collected therein. The expenses thus incurred by the commission shall be audited by the executive council, and the amount thereof shall be drawn from time to time upon the warrants of the state auditor."

Drugs and medicines containing intoxicating liquor or alcohol, but so compounded that they cannot be used as a beverage, may be lawfully sold by registered pharmacists without a permit to sell intoxicating liquors. *McNiel v. Horan*, 153 Iowa 630; 133 NW. 1070. If the distinctive character of the intoxicating liquor is so destroyed by compounding it with drugs so that it cannot be used as a beverage and in fact becomes a medicine to be used for diseases, and cannot be styled or used as an intoxicating drink, its sale is not in violation of the law. *Berner v. McHenry*, Judge, Iowa; 151 N. W. 450. If any liquid contains alcohol and could be and is used as a beverage it comes within the prohibition of the statute.

Any permit holder selling intoxicating liquors as a beverage is subject to the mulct tax provided for in Sec. 2432 of the Code.

See also statutes relating to manufacturers' permits.

SEC. 2398 of the code. **Record of purchases and sales.** "Every permit holder shall keep strict account of all liquors purchased or

procured by him in a book kept for that purpose, which shall be subject at all times to the inspection of the commissioners of pharmacy, the county attorney, any grand juror, sheriff or justice of the peace of the county, and such book shall show of whom such liquors were purchased or procured, the amount and kind, the date of receipt and amount sold; also the amount on hand of each kind for each two months, and at the same time he returns requests to the county auditor he shall file a statement of such account with such auditor, except that the items of sales need not be embraced therein, but the aggregate amount of each kind shall be, and such statement shall be verified. All forms necessary to carry out the provisions of this chapter not otherwise provided for shall be as may be provided by the commissioners of pharmacy."

SEC. 2399 of the code. **Illegal sales by permit holder or his clerk—evidence.** "Every permit holder or his clerk shall be subject to all the penalties, forfeitures and judgments, and may be prosecuted by all the proceedings and actions criminal and civil, whether at law or in equity, provided for or authorized by this chapter and the permit shall not shield any person who abuses the trust imposed by it or violates the law. In case of conviction in any proceeding, civil or criminal, the liquors in possession of the permit holder shall by order of the court be destroyed, and on the trial of an action or proceeding against any person for manufacturing, selling, giving away or keeping with intent to sell intoxicating liquors in violation of law, or for any failure to comply with the conditions or duties imposed by law, the requests for liquors and returns made to the auditor, the quantity and kinds of liquors sold, or kept, purchased or disposed of, the purpose for which liquors were obtained by or from him and for which they were used, the character and habits of sobriety or otherwise of the purchasers, shall be competent evidence, and may be considered, so far as applicable to the particular case, with any other recognized, competent and material facts and circumstances bearing on the issues involved in determining the ultimate facts. In any suit, prosecution or proceeding under this chapter, the court shall compel the production in evidence of any books or papers required to be kept, and shall compel any permit holder, his clerk, or any person who has purchased liquors of either of them, to appear and give evidence, but such oral evidence shall not be used against such person or witness on the trial of any criminal proceedings against him."

The fact that illegal sales of liquor were not made by the pharmacist personally, but through others in his store and without his authority is no defense to an action to enjoin the conduct of his business as a nuisance on account of such illegal sales. *Stromert v. Johnson*, 144 Iowa 682; 123 NW. 336. A pharmacist is bound by the acts of his employees.

SEC. 2401, Supplement, 1913. **How business must be conducted—partner—clerks—physicians.** "A permit holder may employ not more than two registered pharmacists as clerks to sell intoxicating liquors in conformity to the permit and the law; but in such cases the acts of clerks in conducting the business shall be considered the acts of the permit holder, who shall be liable therefor as if he had personally done them, and in making returns, the verification of such requests as may have been received, attested and filled by the clerk must be made by such clerk, and the clerk who transacted any of the business under the permit must join in the general oath required of the employer, so far as relates to his own connection therewith. If for any cause a registered pharmacist who holds a permit shall cease to hold a valid and subsisting certificate of registration or renewal thereof, his permit shall be forfeited and be null and void. Nothing contained in this chapter shall be construed to prevent licensed physicians from in good faith dispensing liquors as medicines to patients actually sick and under their treatment. In case a permit holder shall die, his personal or legal representative may continue the business, subject to the provisions thereof, through the agency of any reputable registered pharmacist, upon the approval of the court granting such permit, or the clerk thereof, and the giving of the bond as hereinbefore provided. A partner who is a registered pharmacist, not holding a permit, shall have the same rights and be subject to the same restrictions as clerks; and for whose acts the permit holder shall be held responsible the same in all respects as for his clerks."

It will be noted that the above section permits licensed physicians to dispense intoxicating liquor to patients *actually sick* and under their treatment. His dispensing is limited to cases of actual sickness and in so dispensing the physician must act at his peril. *State v. Field*, 89 Iowa 34.

Illegal sales of liquor may render the principal liable for conducting a nuisance. *State v. O'Malley*, 132 Iowa 696; 109 NW. 491.

SEC. 2397 of the code. **Permit holder must report sales to county auditor.** "On or before the fifteenth day of January, March, May, July, September and November of each year, each permit holder shall make full returns to the county auditor, under

oath, of all requests filled by him and his clerks during the two preceding months, which oath shall be in the following form: "I, being duly sworn, on oath state that the request for liquors herewith returned are all that were received and filled at my pharmacy (or place of business) during the months of, A. D.; that I have carefully preserved the same, and that they were filled up, signed and attested at the date shown hereon, as provided by law; that said requests were filled by delivering the quantity and kinds of liquors required, and that no liquors have been sold or dispensed under color of my permit during said months except as shown by the requests herewith returned, and that I have faithfully observed and complied with the conditions of my bond and oath taken by me thereon indorsed, and with all the laws relating to any duties in the premises."

SEC. 2400, Supplement, 1913. **Revocation of permit.** "Permits shall be deemed trusts reposed in the recipients, and may be revoked upon sufficient showing by order of a court or judge. Complaint may be presented at any time to the district or superior court, or a judge thereof, which shall be in writing and signed and sworn to by three citizens of the county in which the permit was granted. A copy of the complaint shall, with a notice in writing of the time and place of hearing, be served on the accused five days before the hearing, and if the complaint is sufficient, and the accused appear and deny the same, the court or judge shall proceed without delay, unless continued for cause, to hear and determine the controversy. If continued or appealed at the instance of the permit holder, his permit may, in the discretion of the court, be suspended during the controversy. The complainant and accused may be heard in person or by counsel, or both, and proofs may be offered by the parties; and if it shall appear upon such hearing that the accused has in any way abused the trust, or that liquors are sold by the accused or his employes in violation of law or dispensed unlawfully, or he has in any proceeding, civil or criminal, within the last two years, been adjudged guilty of violating any of the provisions of this chapter, the court or judge shall revoke and set aside the permit; the papers and order in such case shall be immediately returned to and filed by the clerk of the court, and, if heard by a judge, the order shall be entered of record as if made in court; and if in this or any other proceeding, civil or criminal, it shall be adjudged by

the court or judge that any registered pharmacist, proprietor or clerk, has been guilty of violating any provision of this chapter, such adjudication may be by the commissioners of pharmacy regarded as sufficient, if repeated, to work a forfeiture of his certificate of registration. It shall be the duty of the clerk to forward to the commissioners of pharmacy transcripts of such judgments or orders without charge therefor, and as soon as practicable after final judgment or order has been made and entered."

MANUFACTURERS' PERMITS.

The 37th G. A., Chap. 133, enacted an entirely new statute making it possible for certain manufacturers to secure intoxicating liquor for manufacturing purposes. This act is as follows:

Substitute for S. F. 100.

An act to authorize manufacturers of patent and proprietary medicines, tinctures, extracts and other commodities not susceptible of use as a beverage, but which require as an ingredient thereof alcohol, spirituous or vinous liquors, to obtain a permit authorizing the purchase, transportation and possession of the same for use by such manufacturers, and providing penalties for the violation thereof.

Be it Enacted by the General Assembly of the State of Iowa:

SECTION 1. Who may obtain a manufacturer's permit. "Any person, firm or corporation within this state engaged, in good faith, in the business of manufacturing patent and proprietary medicines, tinctures, extracts or other commodity not susceptible of use as a beverage but which require as, one of their ingredients alcohol spirituous or vinous liquors, and who desires to purchase and have transported by either intrastate or interstate common carriers and have possession of such liquors shall, before purchasing, transporting or using such liquors, apply for and obtain a permit authorizing such sale, transportation and use as hereinafter provided."

SEC. 2. Application for permit—what it must contain. "Any person, firm or corporation desiring such permit shall apply to the judge of the district court of the county in which the principal place of business is located by filing with the clerk of said district court the affidavit of the person, member of the firm, or secretary or other managing officer of the corporation, as the case may be, stating therein the following facts:

First—The name, place of business and postoffice address of the person, firm or corporation desiring such permit.

Second—The business in which said person, firm or corporation is engaged and the articles manufactured by them which require in

their manufacture the use of alcohol, spirituous or vinous liquors and approximately the amount required during a calendar month.

Third—That neither the applicant nor any member of the firm or officer of the corporation has been convicted of any violation of the laws of this state with reference to the sale of intoxicating liquors within three years last past prior to the date of said affidavit.”

SEC. 3. Hearing of the application—two thousand dollar bond required—permit good for five years. “Upon the filing of said affidavit, together with other proof submitted, if any, the clerk shall immediately notify the county attorney of such application. If, after a hearing, the judge is satisfied that the facts stated in said affidavit are true and that the applicant is a person fit and proper to be entrusted with the permit applied for, the same shall be issued upon the filing by the applicant of a bond in the sum of two thousand dollars (\$2,000), the sureties to be approved by said clerk, conditioned as provided in Section 2390 of the Supplement to the Code, 1913, which permit, unless revoked for cause, shall remain in force for a period of five years from the date of its issuances.”

SEC. 4. Clerk to keep a record of permits and issue manufacturer's shipping permits—in triplicate. “It shall be the duty of said clerk to keep a record of permits issued hereunder, giving each permit holder a serial number and at the time of the issuance of said permit, or afterwards while the same remains in force, on the application of the permit holder the clerk shall deliver to him certificates showing his authority to buy, transport and use such alcohol, spirituous or vinous liquors as may be covered by said permit, which certificates shall be in triplicate and on red paper and in substantially the following form:

MANUFACTURERS' SHIPPING PERMIT.

This to certify that.....
 of, County of.....
 State of Iowa, is the holder of Manufacturers' Permit No.....
 which will expire on the.....day of....., 19....,
 and that such permit holder is authorized to purchase and have transported to him alcohol, spirituous or vinous liquors of the kind and amounts specified below, provided one duplicate of this certificate is firmly pasted or affixed to the exterior of the package and one duplicate hereof is attached to the bill of lading and after

the delivery of said liquors to such permit holder, said duplicate with date of delivery indorsed or stamped thereon shall be by the delivering carrier promptly mailed to the undersigned:

Kinds of Liquors	Amount
.....
.....
Purpose for which to be used	
.....	
.....	
.....	
Clerk of the District Court,	
.....County, Iowa.	

SHIPPING ORDER

.....

.....

Please ship to us via.....

(here insert name of carrier)

the liquors above specified.

.....”

SEC. 5. The use of triplicate shipping permits—duty of the clerk to compare. “When the holder of any permit granted under this act desires to purchase and have transported any liquor provided for in this act, he shall make a written order in triplicate upon the blanks provided for in section four (4) hereof, which shall be furnished to him by said clerk for a fee of twenty-five cents per set of three, setting forth the exact amount and kind of liquor ordered, from whom and by what railway, express company or other common carrier the said liquor is to be transported. One copy of this order shall be immediately filed with the clerk of the district court of the county in which the permit is issued, one copy shall be attached to the package in which shipment is made in a conspicuous place in such way that it can not be removed without showing evidence of mutilation where the entire order is shipped in one package, and if the said order shall be contained and shipped in more than one package, then the consignor shall attach the original copy to one of said packages and a duplicate thereof to each additional package required to ship said order, and the third copy shall be attached at the original point of shipment to the waybill of the common carrier trans-

porting such liquor. This copy, when the holder of the permit or his authorized agent shall have receipted for the said liquor, shall be stamped with the date of delivery of such liquor and immediately filed by the agent of the common carrier which has transported the said liquor with the clerk of the district court of the county in which permit is granted. The clerk of the district court shall compare the copy of the order filed by the agent of the common carrier with the copy filed by the holder of the permit and, if any discrepancy exists, he shall report such fact to the county attorney."

SEC. 6. Lawful for permit holder to sell and transport to the holder of a manufacturer's permit. "It shall be lawful for any person, firm or corporation holding a permit in the state of Iowa for the sale of alcohol, spirituous or vinous liquors to sell alcohol, spirituous or vinous liquors to holders of permits under this act and to deliver same to common carriers for transportation to such permit holders under the conditions and as provided by this act, anything to the contrary in any other law notwithstanding."

SEC. 7. Duplicate certificate must be attached—authority for transporting and delivering. "It shall be the duty of any permit holder within this state or dealer without the state filling such order to paste or otherwise attach firmly by one duplicate of such certificate to the exterior of such package, which shall be sufficient authority for the transportation and delivery to such permit holders of the package containing such liquors."

SEC. 8. Compliance with the law authorizes common carrier to deliver the liquor. "When the provisions of this act have been fully complied with, common carriers are authorized to transport to such permit holders liquors described in this act in the manner specified therein and the permit holder is authorized to carry or convey such liquor to his place of business, anything in any other law to the contrary notwithstanding."

SEC. 9. Penalty—conviction automatically revokes permit. "Any person, firm or corporation violating any of the provisions of this act shall be punished as provided in section 2383 of the supplement to the code, 1913. And a conviction of any violation of the liquor laws of this state shall automatically work a revocation of said permit."

SEC. 10. **Date when effective.** "This act being deemed of immediate importance shall take effect and be in full force from and after its publication in the Des Moines Register and the Des Moines Capital, newspapers published in Des Moines, Iowa."

Approved April 3, A. D. 1917.

Sec. 2432 of the Code provides that any permit holder selling intoxicating liquors as a beverage shall pay the mulct tax provided for in that section. It is a query whether the mulct tax may be assessed in addition to the penalties provided for in sec. 9, of the above act. Unlawful disposition of intoxicating liquor by manufacturer penalized by Sec. 2386, Supplement, 1913.

WHOLESALE DRUGGISTS' PERMITS.

The law relating to wholesale druggists' permits is not an act complete within itself but is merely additional to the laws set forth in chapter six of title twelve of the Code relating to Intoxicating Liquors. See title to Wholesale Druggists' Permit Act, 34th G. A., 104.

The act, as amended, is as follows:

SEC. 2401-a, Supplement, 1913, as amended by 37 G. A., Chapt. 422. **Wholesale druggists may sell for certain purposes—request blank.** "Any corporation doing a general wholesale drug business within the state and having a registered pharmacist who holds a permit to sell intoxicating liquors, and is financially interested in and actually engaged in the conduct of said business, may sell and dispense intoxicating liquors, not including malt liquors, for the purpose of compounding medicines, tinctures, and extracts, none of which can be used as a beverage, to any registered pharmacist conducting a general drug business within the state, or to any firm or corporation having a registered pharmacist financially interested therein and doing a general drug business within the state, and to physicians, **dentists and veterinarians** duly licensed under the laws of the state; and for resale, to registered pharmacists holding a permit to sell intoxicating liquors. Such sales of intoxicating liquors shall be made only upon the written request of the registered pharmacist, physician, **dentist or veterinarian** desiring to purchase the same, said request to be signed by the applicant for the purchase and countersigned by the permit holder of the corporation making the sale with his name and the date the goods are delivered for transportation, and shall be in the following form:

To.....Iowa,19..
Reg. Phar. No.....:

I hereby make request for the purchase of the following
 intoxicating liquors:

Amount

Kind

My true name is....., I am (1) a phar-
 macist registered under the laws of the state of Iowa; my
 registry number is, I am conducting a general
 drug business in....., Iowa; (2) a physician duly
 licensed under the laws of the state of Iowa, and have my
 office at, Iowa, where I am engaged in
 the practice of medicine; (3) a dentist duly licensed under
 the laws of the state of Iowa, and have my office at.....,
 Iowa, where I am engaged in the practice of dentistry; (4)
 a veterinarian duly licensed under the laws of the state of
 Iowa, and have my office at, Iowa, where I
 am engaged in the practice of veterinary surgery.

The actual purpose for which this request is made is for
 I do not habitually use intoxicating liquors as
 a beverage.

.....
 Signature of Purchaser."

Amendments approved April 25, A. D. 1917, effective July
 4, 1917.

SEC. 2401-b, Supplement, 1913. **Requests may be forwarded—
 filed with county auditor.** "Requests for intoxicating liquors
 made under the provisions of the foregoing section need not be
 filled out and signed in the presence of the permit holder coun-
 tersigning the same for the wholesale drug corporation, but may
 be done by the applicant at his place of business and forwarded
 to the corporation of whom the request is made. Said request shall
 be preserved and returns made to the county auditor in accord-
 ance with the provisions of section two thousand three hundred
 and ninety-seven (2397) of the code, but said requests need not
 be consecutively numbered."

SEC. 2401-c, Supplement, 1913. **Shipments—what bill of lading
 must show.** "Intoxicating liquors shipped under the provisions
 of this act may be enclosed in the same box, package, or carton

containing other drugs or merchandise. In all cases of such shipments of intoxicating liquors the bill of lading shall set out that intoxicating liquors are in the shipment with the kind and amount of the same, and one copy of the bill of lading shall be signed for the wholesale drug corporation by the permit holder provided for in section one (Sec. 2401-a, Supplement, 1913, as amended by 37th G. A., chap. 422) of this act, or any officer of such drug corporation."

Carriage and delivery of liquors by carriers—procedure.

The 37th G. A., chap. 422, enacted the following new provision:

Sec. 2. That section twenty-four hundred one-d (2401-d), Supplement to the Code, 1913, be and the same is hereby repealed and the following enacted in lieu thereof:

"All railway, transportation and express companies and other common carriers shall receive intoxicating liquors (not including malt liquors) from corporations conducting a wholesale drug business and shipped to registered pharmacists, physicians, dentists, or veterinarians in good standing and duly licensed under the laws of this state, and when consigned to the station nearest their residence. Before receiving such shipments, the common carrier shall require the corporation to file with it a copy of the permit of the permit holder connected with the wholesale drug corporation making the shipment, said copy to be certified by the clerk of the district court; the affidavit of any officer of the corporation that said corporation is actually and in good faith engaged in the wholesale sale of drugs in this state, and that the permit holder is a stockholder in the drug corporation; and with each shipment of intoxicating liquors a bill of lading made out and signed as provided for in section three (sec. 2401-c, Supplement, 1913) of this act. Before delivery of the liquor consigned to such physician, dentist or veterinarian, the consignee shall file with the carrier an affidavit that such liquor is for professional use only and not for sale or use as a beverage, and shall in person sign the delivery book required by section twenty-four hundred twenty-one-b (2421-b), Supplemental Supplement to the Code, 1915, to be kept. The foregoing provisions having been complied with, common carrier shall be relieved from all liabilities otherwise imposed by law for the transportation of intoxicating liquors."

Amendment approved April 25, A. D. 1917. Effective July 4, 1917.

The foregoing provisions relieve the carrier of liability but it is a query whether the shipper is relieved from labeling the packages as required by Sec. 2421 of the code. To be clearly within the law all packages should be labeled.

SEC. 2401-e, Supplement, 1913. **Failure to comply.** "A failure to comply with all or any of the provisions of this act shall render the person who so fails to comply liable to all the penalties otherwise imposed by law for the sale and transportation of intoxicating liquors within the state."

Any permit holder selling intoxicating liquors as a beverage is subject to the mulct tax provided for in Sec. 2432 of the Code.

SEC. 2401-f, Supplement, 1913. **"Corporation" defined.** "The term corporation, as used in this act shall be construed to include corporations, firms and persons engaged in the general wholesale drug business within this state."

LAWS RELATING TO SEARCH WARRANTS

SEC. 2413 of Supplemental Supplement 1915 as amended by 37 G. A. Chap. 322. **Search Warrant—who may obtain—seizure.** "If any credible resident of this state, or any special agent of the state, or any assistant authorized by him shall, before a justice of the peace for the county, or any judge of the district court of said county, or any judge of the superior court of any city within said county make written information, supported by his oath, or affirmation, that he has reason to believe, and does believe, that any intoxicating liquor, described as particularly as may be in said information, is in said county, in any place described as particularly as may be in said information, owned or kept by any person named or described in said information as particularly as may be, and is intended by him to be sold or has been purchased or procured as the result of solicitation or has been transported in violation of the provisions of this chapter, said justice or judge shall, upon finding probable cause for such information, issue his warrant of search, directed to any peace officer in the county, describing as particularly as may be

the liquor and the place described in said information, and the person named or described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor, with the vessels containing it, and to keep the same securely until final action be had thereon; whereupon the said peace officer to whom such warrant shall be delivered shall forthwith obey and execute, as effectually as possible, the commands of said warrant, and make return of his doings to said justice, or judge and shall securely keep all liquors so seized by him and the vessels containing them until final action be had thereon. If the place to be searched be a dwelling-house in which any family resides, and in which no tavern, eating house, grocery or other place of public resort is kept, such warrant shall not be issued unless said complainant shall, on oath or affirmation, declare before said justice or judge that he has reason to believe and does believe that within one month next before the making of said information intoxicating liquor has been, in violation of this chapter, sold in said house, or in some dependency thereof, by the person accused in said information, or by his consent or permission; nor unless, from the facts and circumstances disclosed by such complaint, the said justice or judge shall be of the opinion that said complainant has adequate reason for such belief. **In all such prosecutions, the action shall be in the name of the state."**

Amendments effective July 4, 1917.

Since municipal courts have all the criminal jurisdiction that heretofore existed in a justice court, a judge of the municipal court would be authorized, in view of sec. 694-c18, Supplemental Supplement, 1915, to issue a liquor search warrant.

The form of the information for a search warrant in any court should be substantially as follows:

FORM.

Information for Search Warrant.

STATE OF IOWA,	}	In Justice's Court, in and for
Ex rel.,B.....,	K..... Township,
Plaintiff,	M..... County, Iowa.
vs.		
.....A.....	}	BeforeX.....
And Certain Intoxicating Liquors		Justice of the Peace
Defendant.		

Comes now, B....., who being duly sworn, on oath states that he is a resident of the State of Iowa, that he has good reason to believe and does believe that certain intoxicating liquors, to-wit:

Whiskey, Brandy, Gin, Rum, Beer, Ale and Wine are in said County, in the State of Iowa, in the building (and dependencies thereto and cellar thereunder) described as follows, to-wit:Lot.....Block
.....in the Town of.....R....., locally known as No.....,
.....Street, in the county and State aforesaid.

And that said liquors are owned and kept by the above named Defendant and is intended by him to be sold or dispensed in violation of the laws of the State of Iowa, both in the day time and night time.

.....B.....
Relator.

Subscribed and sworn to before me this.....day of.....
A. D., 19.....X.....
Justice of the Peace.

If the place to be searched be a dwelling house in which any family resides, and in which no tavern, eating house, grocery or other place of public resort is kept, the information must contain a statement substantially as follows: "And affiant believes and has reason to believe that intoxicating liquors have been sold therein within the past thirty days, in violation of law."

Prior to the 37 G. A. only a resident of the county could file information for a search warrant, now "any credible resident of this State, or any special agent of the State, or any assistant authorized by him" may file the necessary information.

Furthermore, intoxicating liquor that has "been purchased or procured as the result of solicitation or has been transported in violation of the provisions of this chapter" is subject to seizure the same as liquor kept for sale or with the intent to sell. In cases where it is the desire to seize liquor for either of the reasons given above it should be so stated in the information and also in the search warrant.

After July 4th, 1917, all such actions must be brought in the name of the State.

SEC. 2414 of the code. **Information for search warrant—defects.** "The information and search warrant in such case shall describe, with reasonable particularity, the place to be searched, as well as the liquors to be seized. When any liquors shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same by reason of any alleged insufficiency of description in the warrant of the liquor or place, but the claimant shall only have a right to be heard on the merits of the case."

The form of the search warrant issued by the judge or justice should be substantially as follows:

FORM.

Search Warrant.

STATE OF IOWA, Ex rel.,	}	In Justice's Court, in and for
.....B.....	K..... Township,
Plaintiff.	M..... County, Iowa.
vs.		BeforeX.....
.....A.....	}	Justice of the Peace.
And Certain Intoxicating Liquors.		
Defendant.		

TO ANY PEACE OFFICER OF.....M.....COUNTY, IOWA:

Information on oath having been duly filed before me, by a credible resident of the State of Iowa, charging that certain intoxicating liquors, to-wit: Whiskey, Brandy, Gin, Rum, Beer, Ale and Wine are in said county, in the State of Iowa, in the building (and dependencies thereto and cellar thereunder) described as follows, to-wit.

.....Lot....., Block.....in the Town of...R....., locally known as No., Street, in the county and State aforesaid.

And that said liquors are owned and kept by said defendant..... with intent by *him* to sell or dispense the same contrary to law. You are, therefore, commanded in the day time (or at any time of day or night) to thoroughly search the premises above described, and if you find any of the said liquors thereon, to seize the same with the vessels containing them, and to keep the same securely until final action thereon. And you will forthwith serve this writ and return the same to this court with your return endorsed thereon.

Given under my hand this.....day of.....
A. D., 19.....

.....X.....
Justice of the Peace.

SEC. 2415 of the Supplemental Supplement, 1915, as amended by 37 G. A. Chap. 322. **Notice of seizure—trial—judgment—appeal.** “In the event of a seizure under said warrant, the officer shall forthwith make a return of his acts thereunder, and within forty-eight hours thereafter the justice or judge who issued the warrant shall cause to be left at the place where said liquor was seized, if said place be a dwelling-house, store or shop, posted in some conspicuous place on or about said buildings, and also to be left with or at the last known and usual place of residence of the person named or described in said information as the owner or keeper of said liquor, if he be a resident of this state, a notice, summoning such person, and all others whom it may concern, to appear before said justice or judge within the county at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the posting and leaving of said notices, and show cause, if any they have, why said liquor,

together with the vessels in which the same is contained, should not be forfeited; and said notice shall, with reasonable certainty, describe said liquor and vessels, and shall state where, when and why the same were seized. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said liquor and vessels, or any part thereof, may appear and show cause why the same should not be forfeited. If any person shall so appear, he shall become a party defendant in said case, and said justice or judge shall make a record thereof. Whether any person shall so appear or not, said justice or judge shall, at the prescribed time, proceed to the trial of said case, and said complainants or either of them may, and upon their default the officer having such liquor in custody shall, appear before said justice or judge and prosecute said information, and show cause why such liquor should be adjudged forfeited. The proceedings in the trial of such case may be the same, substantially, as in cases of misdemeanor triable before justices of the peace, and if any person shall appear and be made a party defendant as herein provided, and shall make written plea that said liquor, or a part thereof claimed by him, was not owned or kept with intent to be sold in violation of this chapter **and was not purchased or procured as the result of solicitation, nor illegally transported**, such party defendant may, at his option, demand a jury to try the issue, and if, upon the evidence presented, the said justice or judge or jury, as the case may be, shall, by verdict, find that said liquor was, when seized, owned or kept by any person, whether said party defendant or not, for the purpose of being sold in violation of this chapter, **or was purchased or procured as the result of solicitation or has been unlawfully transported**, the said justice or judge shall render judgment that said liquor, or said part thereof, with the vessels in which it is contained, is forfeited. If no person be made defendant in manner aforesaid, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prosecutions where the prosecution fails. If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of proceedings in the seizure and detention of the liquor claimed by him, and trial, up to the time of judgment. But if such judgment shall be against more than one party defendant claiming distinct interests in said liquor, then the costs of said proceedings

and trial shall be according to the discretion of said justice or judge, equitably apportioned among said defendants and execution shall be issued on said judgments against said defendants for the amount of the costs so adjudged against them. Any person appearing and becoming party defendant as aforesaid may in cases arising before a justice of the peace appeal from said judgment of forfeiture, as to the whole or any part of said liquor and vessels claimed by him and so adjudged forfeited, to the district court, as in ordinary cases of misdemeanor. **In any such proceedings where the judgment is against the state, it shall have the same right of appeal to the district court, except that no bond shall be required, and if an appeal be taken by the state, the same shall operate as a stay of proceedings and the liquors seized under the warrant shall not be returned to any claimant thereof until, upon the final determination of said appeal, he is found entitled thereto."**

Amendments effective July 4, 1917.

The notice of seizure required by the foregoing section may be in substantially the following form:

FORM.

Notice of Liquor Seizure.

To.....and All Others to Whom it May Concern:

Notice is hereby given to you that on the.....day of..... A. D., 19.... a Search Warrant was issued from the Court of the undersigned against certain Intoxicating Liquors alleged to be kept for sale in violation of law, by..... in the building (and dependencies thereto and cellars thereunder) described as follows, to-wit:.... (describe as accurately as possible).... That under and by virtue of said Warrant a search of said premises was made on the.....day of.....,.... A. D., 19.... and certain Intoxicating Liquors, with the vessels in which the same was contained to-wit:.... (describe liquors).... were found, and the same seized by the officer executing this warrant.

Now, therefore you, and each of you, are hereby summoned to appear before the undersigned, a Justice of the Peace, at his office in..... Township,County, Iowa, on the.....day of..... A. D., 19.... at..... o'clock..... M., and show cause, if any you have, why the aforesaid liquors and the vessels in which the same are contained, should not be forfeited and dealt with as provided by law.

.....
Justice of the Peace.

Dated this.....day of..... A. D., 19....

The officer should make a return showing the manner in which he served the foregoing notice.

SEC. 2427, of the Code as amended by the 37 G. A. Chapt. 323. **Evidence of illegal selling or keeping—license.** “In all actions, prosecutions and proceedings under the provisions of this chapter, proof of the actual manufacture, sale or gift in evasion of the statute of intoxicating liquors by a person not authorized to manufacture, sell or give the same shall be presumptive evidence of illegal manufacture or sale, and the finding of intoxicating liquors in the possession of one not legally authorized to sell or use the same, except in a private dwelling-house which does not include or is not used in connection with a tavern, public eating house, restaurant, grocery, or other place of public resort, or the finding of the same in unusual quantities in a private dwelling-house or its dependencies* shall be presumptive evidence that such liquors are kept for illegal sale. The fact that any person not authorized to keep for sale and to sell intoxicating liquors for lawful purposes, engaged in any kind of business, has or keeps posted in or about his place of business a receipt or stamp showing payment of the special tax levied under the laws of the United States upon the business of selling distilled, malt or fermented liquors, or shall have paid such special tax for the sale of such liquors in this state, shall be presumptive evidence that the person owning or controlling such receipt or stamp, or having paid such special tax, is engaged in keeping for sale or selling intoxicating liquors contrary to the provisions of this chapter.”

(*) This section was amended by the 37 G. A., chapt. 323, by striking out the words following dependencies, to-wit: “of any person keeping a tavern, public eating house, grocery, or other place of public resort,”—this amendment effective July 4, 1917.

The statute above set forth states that the finding of liquor in *unusual quantities* in the possession of one not legally authorized to sell or use the same is presumptive evidence that such liquors are kept for illegal sale. Thus far the Supreme Court has never passed upon the maximum amount of liquor that one may possess and not have an *unusual quantity*.

Every holder or every person who has paid the special tax to sell intoxicating liquors as required by the federal law must place and keep conspicuously exhibited in his place of business all stamps denoting payment of such special tax. Sec. 5988 of chapt. 3, tit. 35, of the Revised Statutes of the United States. Failure to comply with this requirement is adequately punished by the federal statute above cited.

SEC. 2427-a. Supplement, 1913. **County attorney to secure certified copy of names of federal license holders.** That the several county attorneys of this state are hereby authorized and directed to secure from the federal internal revenue collectors for Iowa, on

or before the fifteenth day of January, April, July and October of each year, a certified copy of the names of all persons who have paid to the federal government special taxes imposed upon the business of selling intoxicating liquors within their respective counties, except such persons within their counties as are engaged in the sale of intoxicating liquors under the mullet law and registered pharmacists who hold valid permits to keep and sell intoxicating liquors for medicinal purposes, and to pay the internal revenue collector the fee prescribed by the statutes of the United States. Said county attorney shall file with the county auditor of his county a certified statement of the amount paid to such internal revenue collector, and the board of supervisors shall audit and allow the same at their next regular or special meeting."

SEC. 2427-b, Supplement, 1913. **Certified copy filed and recorded.** "Upon receipt by the county attorney of certified copies of the names of all persons in his county who have paid the federal government the special tax imposed on the business of selling intoxicating liquor as aforesaid, the county attorney shall, after examination of said list, file the same with the auditor of his county, who shall record the same in a book kept therefor, which shall be open to public inspection."

SEC. 2427-c, Supplement, 1913. **Payment of federal tax—prima facie evidence of sale, etc..** "The certified copy furnished by the internal revenue collector of the name of any person who has paid to the federal government the special tax imposed upon the business of selling intoxicating liquors shall be prima facie evidence that said person is engaged in the sale of, or keeping with intent to sell, intoxicating liquors in violation of law, unless said person by way of defense shows that he has complied with all the terms and conditions of the mullet law, or that he is a registered pharmacist, actually engaged in business as such and said certified copy shall be competent evidence in any court within this state."

SEC. 2416 of the code. **Destruction of liquor and vessels.** "Whenever it shall be finally decided that liquor seized as aforesaid if forfeited, the court rendering final judgment of forfeiture shall issue to the officer having said liquors in custody, or to some other peace officer, a written order, directing him forthwith to destroy said liquor and vessels containing the same, and immediately thereafter to make return of said order to the court whence issued, with his doings indorsed thereon. Whenever it shall be finally decided

that any liquor so seized is not liable to forfeiture, the court by whom such final decision shall be rendered shall issue a written order to the officer having the same in custody, or to some other peace officer, to restore said liquor, with the vessels containing the same, to the place where it was seized, as nearly as may be, or to the person entitled to receive it, which order the officer shall obey, and make return thereon to the court of his acts thereunder, and the costs of the proceeding in such case attending the restoration, as also the costs attending the destruction of such liquor in case of forfeiture, shall be taxed and paid in the same manner as is provided in case of ordinary criminal prosecutions where the prosecution fails."

While a justice of the peace cannot exercise jurisdiction over cases where the amount involved exceeds \$100.00, except where the parties agree that he may have jurisdiction up to \$300.00, yet in condemnation proceedings he has jurisdiction. Such proceedings are criminal in nature, and the authority of the justice extends to all cases, without regard to the value of the property seized. *State v. Arlen*, 71 Iowa 216.

The order for the destruction of the liquor and the vessels in which it is contained may be in substantially the following form:

FORM.

Order for the Destruction of Intoxicating Liquors.

In Justice's Court.....Township.....County, Iowa
STATE OF IOWA

vs.

.....A..... } Docket....., Page.....
.....
and certain Intoxicating Liquors. }

To.....P.....Constable of said County:

You are hereby notified that the liquor now in your custody, to-wit:
.....(describe accurately as possible).....formerly seized by you under
and by virtue of a Search Warrant issued in the above entitled cause, has
been adjudged forfeited, after due trial as provided by law.

Now therefore, you are directed forthwith to destroy said liquor and
the vessels containing the same, and immediately thereafter to make re-
turn of this order to my court, with your doings endorsed thereon and
sworn to.

.....X.....
Justice of the Peace.

Dated this.....day of.....19....

The officer destroying the liquor should certify in his return all costs
attending the destruction of the same.

MISCELLANEOUS PROVISIONS AND PENALTIES

SEC. 2424 of the code. **Requisites of indictment or information—allegations as to second offense—testimony of purchaser.** “In any indictment or information under this chapter, it shall not be necessary to set out exactly the kind or quantity of intoxicating liquors manufactured, sold, given in evasion of the statute, or kept for sale, nor the exact time of manufacture, sale, gift or keeping for sale, but proof of the violation by the accused of any provision of this chapter, the substance of which violation is briefly set forth, within the time mentioned in said indictment or information, shall be sufficient to convict such person; nor shall it be necessary in any indictment or information to negative any exceptions contained in the enacting clause or elsewhere, which may be proper ground of defense; and, in any prosecution for a second or subsequent offense, as provided herein, it shall not be requisite to set forth in the indictment or information the record of a former conviction, but it shall be sufficient briefly to allege such conviction; nor shall it be necessary in every case to prove payment in order to prove a sale within the true meaning and intent of this chapter, and the person purchasing any intoxicating liquor sold in violation of this chapter shall in all cases be a competent witness to prove such sale.”

An indictment should be in substantially the following form:

FORM.

Indictment.

In the District Court of the State of Iowa in and for.....X.....County
.....Term A. D., 19....

STATE OF IOWA,

Defendant. }

vs.

.....A.....

Plaintiff. }

Indictment for Bootlegging.

The Grand Jury of the County of.....X....., in the State of Iowa, being legally impanelled, sworn and charged in the name and by the authority of the State of Iowa, accuse.....A.....of the crime of bootlegging, committed as follows:

That the said.....A.....on the first day of May A. D., 1917, in the County of.....X....., in the State of Iowa, did then and there solicit, take and accept orders for the sale, shipment and delivery of intoxicating

liquor, from and of one John Doe and divers other persons to this Grand Jury unknown.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Iowa.

.....Z.....

County Attorney.

The within indictment was presented to the District Court of....X.... County, Iowa, in open Court by the foreman of the Grand Jury, in the presence of all the Grand Jurors, and filed by the Clerk of the District Court of said County, on the 1st day of June, A. D., 1917.

.....W.....

Clerk of the District Court of said County.

ByY.....Deputy

I hereby order a bench warrant to issue forthwith on the within indictment for the arrest of said Defendant, and his bail is fixed at Five Hundred Dollars.

.....H.....

Judge of the.....Judicial District.

Names of all the Witnesses Examined

Before the Grand Jury.

.....K.....

.....J.....

(Every indictment must bear the following endorsement)

A TRUE BILL.

(Signature of Foreman) M

.....

Foreman of the Grand Jury.

County attorneys should bear in mind that more than one offense may be charged in an indictment for violation of the liquor laws. See Sec. 2425 of the Code.

Omitting venue, etc., the charging portion of an indictment for conducting a liquor nuisance may be in substantially the following form:

The Grand Jury of the County of.....X.....in the State of Iowa, being legally impaneled, sworn and charged, in the name and by the authority of the State of Iowa, accuse.....A.....of the crime of NUISANCE, committed as follows:

The said.....A.....on the 1st day of May A. D., 1917, in the County of.....X.....aforesaid, and on divers other days and times between the 1st day of May A. D., 1917, and the finding of this indictment, in said County, did erect, establish, continue and use a building, erection and place, with intent and for the purpose then and there and therein to sell and dispense intoxicating liquor, contrary to law, and with intent and for the purpose then and therein to own, keep and be concerned, engaged and employed in owning and keeping intoxicating liquor, with intent unlawfully to sell and dispense the same within the State of Iowa aforesaid; and did then and there and therein sell and dispense intoxicating liquor contrary to law, and did then and there and therein own and keep, and

was then and there and therein concerned, engaged and employed in owning and keeping intoxicating liquor, with intent unlawfully to sell and dispense the same within said State, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Iowa.

If the grand jury should indict a person for violating any law of the State, and the accused be at large, the court should issue a warrant for his arrest which should be substantially the following form; if the defendant fails to appear for arraignment or if he fails to appear for sentence after conviction, the form of warrant herein given should be used.

FORM.

Bench Warrant.

State of Iowa,County, ss.

To any Peace Officer in the State:

An indictment having been found in the District Court of said county, on the.....day of.....A. D. 191....., charging....A.... (name defendant)....with the crime of....(state in language of statute if possible)....you are therefore hereby commanded to arrest the said....A.... and bring him before said Court to answer said indictment, if the said Court be then in session in said county, or, if the said court be not in session in said county, that you may deliver him into the custody of the Sheriff of said county.

Let the said defendant be admitted to bail in the sum of \$.....if he desires to give bail.

Given under my hand and seal of said Court, at my office in....., in the county aforesaid, this.....day of.....A. D. 19....

By order of the Judge of the Court.

.....Z..... Clerk
ByW.....Deputy

Since the judge of the district court is a magistrate he may order the arrest of any person, upon proper information being filed. In such cases he should issue a warrant for arrest in substantially the following form:

FORM.

Warrant for Arrest.

State of Iowa,County, ss.

To any Peace Officer in the State:

Whereas it has been made to appear to the Honorable.....X....., Judge of the District Court of the State of Iowa, in and for..... County, this.....day of.....191....., that....A...(defendant).. has..(state facts briefly in the language of the statute if possible)..

You are therefore hereby commanded to arrest the said.....A....., and bring him before said District Court forthwith. If said Court be not in session you may deliver him into the custody of the Sheriff of said county.

Given under my hand and seal of said Court, at my office in....., in the county aforesaid, this.....day of.....A. D., 19....
 By order of the Judge of the Court.
Z..... Clerk
 ByW.....Deputy

Let the Defendant be admitted to bail in the sum of \$.....if he desires to give bail.

SEC. 2425 of the code. **Several counts—second conviction.** “Information or indictments under this chapter may allege any number of violations of its provisions by the same party, but the several charges must be set out in separate counts, and the accused may be convicted and punished upon each one as on separate informations or indictments, and a separate judgment shall be rendered on each count under which there is a finding of guilty. The second or subsequent convictions provided for in this chapter shall be convictions on separate informations or indictments, and, unless shown in the information or indictment, the charge shall be held to be for a first offense.”

A justice of the peace has no jurisdiction to assess a fine for the violation of the liquor laws of this state where the fine for each separate offense may exceed the sum of one hundred dollars. Sec. 2383, Supplement, 1913. Article 1, sec. 11, of the constitution limits the justice's jurisdiction to fines not exceeding one hundred dollars. The jurisdiction of the justice of the peace in such cases is limited to the holding of a preliminary hearing and for the binding of the defendant over to the grand jury.

SEC. 2402 of the code. **Intoxication punished.** “If any person shall be found in a state of intoxication he is guilty of a misdemeanor, and any peace officer shall, without a warrant, take him into custody and detain him in some suitable place until an information can be made before a magistrate, and a warrant of arrest issued, under which he shall at once be taken before the magistrate issuing the same, or, if for any reason he cannot act, to the next nearest one, where he shall be tried, and, if found guilty, shall be fined in the sum of not less than five nor more than twenty-five dollars and costs of prosecution, or imprisonment in the county jail not more than thirty days. The penalty, or any portion of it, may be remitted by the magistrate before whom the trial is had, and the accused discharged from custody, upon his giving information in writing and under oath, stating when, where and of whom he purchased or received the liquor which produced the intoxication, and the kind and character of this liquor, and, in addition, giving bail for his appearance before any court to give evidence in any

action or complaint to be commenced or preferred against such party for furnishing the same."

The following are some of the legal effects of the use of intoxicating liquor:

Sec. 2477-m1, Supplement, 1913. Where it is the proximate cause of injury it bars recovery of damages under Employer's Liability and Workmen's Compensation act.

Sec. 1571-m23, Supplement, 1913. To operate a motor vehicle while in an intoxicated condition constitutes a misdemeanor. Conviction for second offense punishable as a felony.

Sections 2310-a1, Supplement, 1913, *et seq.* Confinement of dipsomaniacs and inebriates provided for.

Fredjudice presumed if a juror drinks liquor after retiring to consider case.

State v. Baldy, 17 Iowa 39.

Berry v. Berry, 31 Iowa 415.

State v. Reilly, 108 Iowa 735.

Proof of such use sufficient to warrant trial court in setting aside verdict. Carlisle v. City of Council Bluffs, 151 Iowa 181.

Sections 254-a13, *et seq.*, Supplement, 1913. Juvenile court may assume custody of any minor under sixteen years of age addicted to use of liquor.

Sec. 3219 of the Code. Guardian may be appointed for an habitual drunkard.

Sec. 2578, Supplement, 1913. Physician may be refused certificate or have certificate revoked for habitual intoxication.

Sec. 2600-o5, Supplement, 1913. Dentist may have license revoked for "Persistent inebriacy."

Sec. 1258-c, Supplement, 1913, as amended by 37 G. A., chapt. 391. Intoxication or upon conviction of being intoxicated cause for removal from office of: "All elective county, city and town officers."

State v. Baughn, 162 Iowa, 308; 143 NW. 1100, announces "if he is under the influence of liquor so as not to be himself, so as to be excited from it, and not to possess that clearness of intellect and that control of himself that he otherwise would have, HE IS INTOXICATED."

State v. Henderson, 145 Iowa 657, also acknowledges right to remove from office for intoxication.

Sections 3174 and 3175 of the Code. Cause for divorce if after marriage either party becomes addicted to habitual drunkenness.

Sec. 2734-u, Supplement, 1913. Intemperance case for revocation of teacher's certificate or diploma.

Sec. 2489-18a, Supplement, 1913. Use of intoxicants absolutely prohibited around any mine, tracks, building or machinery connected therewith.

Sec. 2461-f, Supplement, 1913. Use of intoxicants upon railway car or street car absolutely prohibited.

The sale of intoxicating liquor to any officer or member of the military forces of the United States, while in uniform, is prohibited by sec. 12, H. R. 3545, of the 65th Congress, 1st Session.

SEC. 2403, Supplement, 1913. **Sale or gift to minor or intoxicated person.** "No person by himself, agent or otherwise, shall in any manner procure for, or sell or give any intoxicating liquors to any minor for any purpose, except upon written order of his parent, guardian, or family physician, or give to or in any manner procure for or sell the same to any intoxicated person, or to one in the habit of becoming intoxicated."

SEC. 2403-a, Supplement, 1913. **Penalty for dispensing liquor to minor, etc.** "Any person violating any of the provisions of section one (sec. 2403, Supplement, 1913) hereof shall be guilty of a misdemeanor, and upon conviction thereof be fined in a sum not less than twenty-five dollars, nor more than two hundred dollars, and costs of prosecution, and shall stand committed to the county jail until such fine and costs are paid."

SEC. 2422 of the code. **Lien of judgments—liability of sureties—costs—evidence of unlawful use of property.** "For all fines and costs assessed or judgments rendered of any kind against any person for a violation of any provision of this chapter, or costs paid by the county on account of such violation, the personal and real property, whether exempt or not, except the homestead, as well as the premises and property, personal and real, occupied and used for the purpose, with the knowledge of the owner or his agent, by the person manufacturing, selling, giving, contrary to the provisions of this chapter, or keeping with intent to sell intoxicating liquors contrary to law, shall be liable, and the same shall be a lien on such real estate until paid. And where any one is required under the provisions of this chapter to give a bond, the principals and sureties shall be jointly and severally liable for all civil damages and costs which may be adjudged against the principal for any violation of any of the provisions of this chapter. Costs paid by the county for the prosecution of actions or proceedings, civil or criminal, under this chapter, as well as the fines inflicted or judgments recovered, may be enforced against the property upon which the lien attaches by execution, or by action against the owner of the property to subject it to the payment thereof. In actions under this section, evidence of the general reputation of the place kept shall be admissible on the question of knowledge of the owner, and written notice given him or his agent by any citizen of the county shall be sufficient to charge him with the same."

The statutory provision rendering the premises occupied and used for illegal purposes in the business of selling intoxicating liquors liable for fines and costs is applicable only when the premises are occupied and used for such illegal purpose with the knowledge of the owner or his agent. *State v. Knapp*,Iowa....; 158 NW. 515. But an order of abatement and an order for the effectual closing of the building must be made regardless of the knowledge or notice of illegal sales by the owner or his agent. *idem*.

SEC. 2404 of the code. **Dispensing intoxicating liquor in club rooms, etc.—prohibited.** “Every person who shall, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining, any club room, or other place in which intoxicating liquors are received or kept for the purpose of use, gift, barter or sale, or for distribution or division among the members of any club or association by any means whatever, and every person who shall use, barter, sell or give away, or assist or abet another in bartering, selling or giving away, any intoxicating liquors so received or kept, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months.”

SEC. 2417 of the code. **Liability for care of intoxicated person.** “Any person who shall by the manufacture, sale or giving away of intoxicating liquors, contrary to the provisions of this chapter, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and one dollar per day in addition thereto for every day such intoxicated person shall be kept, in consequence of such intoxication, which sums may be recovered in a civil action before any court having jurisdiction thereof.”

A physician who treats professionally a person who is injured while intoxicated does not “take charge of and provide for” within the meaning of the above section so as to authorize recovery for his services from one who illegally sells the liquor causing the intoxication. *Sansom v. Greenough*, 55 Iowa 127.

SEC. 2418 of the code. **Civil action for damages by wife, parent, child, etc.** “Every wife, child, parent, guardian, employer or other person who shall be injured in person or property or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have

a right of action in his or her own name against any person who shall, by selling or giving to another contrary to the provisions of this chapter any intoxicating liquors, cause the intoxication of such person, for all damages actually sustained, as well as exemplary damages; and a married woman shall have the same right to bring suits, prosecute, and control the same and the amount recovered, as if a single woman; and all damages recovered by a minor under this section shall be paid either to such minor or his parent, guardian or next friend, as the court shall direct, and all suits for damages under this section shall be by civil action in any court having jurisdiction thereof."

SEC. 2426 of the code. **Landlord may terminate lease for violation of liquor laws.** "Upon a violation of any provision of this chapter committed upon real estate occupied by a tenant, his agent, servant, clerk, employe or any one claiming under him, the landlord of such premises by himself or agent, within thirty days after a judgment therefor is entered of record in any case, civil or criminal, may, in writing, notify such agent, tenant, or the person in possession of said leased premises, to the effect that he has terminated such lease and demands possession thereof within three days after the giving of such notice, and, after the expiration of said three days, may recover possession thereof in an action of forcible entry and detainer, without further notice to quit, upon proof of the record of such judgment and of the giving of such notice, but such termination of the lease shall not divest the property of any lien which has attached by reason of said judgment."

SEC. 2423 of the code. **Payments—contracts—negotiable paper.** "All payments or compensation for intoxicating liquor sold in violation of this chapter, whether such payments or compensation be in money or anything else whatsoever, shall be held to have been received in violation of law, and to have been received upon a valid promise and agreement of the receiver to pay on demand to the person furnishing such consideration the amount of said money, or the just value of such other thing. All sales, transfers, liens and securities of every kind which either in whole or in part shall have been made for or on account of intoxicating liquors sold in violation of this chapter shall be null and void against all persons, and no rights of any kind shall be acquired thereby. No action shall be maintained for intoxicating liquors or the value thereof, sold in any other state or country, contrary to the law of said state or country, or with intent to enable any person to violate

any provision of this chapter, nor shall any action be maintained for the recovery or possession of any intoxicating liquor, or the value thereof, except in cases where persons owning or possessing such liquor with lawful intent may have been illegally deprived of the same. Nothing, however, in this section shall effect in any way negotiable paper in the hands of holders thereof in good faith for valuable consideration, without notice of any illegality in its inception or transfer, or the holders of land or other property who may have taken the same in good faith, without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this chapter."

SEC. 2423-a, Supplemental Supplement, 1915. **Attempt to collect for liquors illegally sold—prohibited.** "The collection of payment, the solicitation of payment, and all attempts directly or indirectly, to collect payment within this state for intoxicating liquor sold or shipped within or into this state to be used for illegal purposes within this state, is hereby prohibited and made illegal, and the violation hereof is hereby made a misdemeanor."

SEC. 2423-b, Supplemental Supplement, 1915. **Injunction may be issued restraining person from attempting collection.** "Every person, who for himself or for another, violates any of the provisions of this act, may be restrained by injunction from continuing to do any of the acts herein prohibited, and all the proceedings for injunctions, temporary and permanent, and for fines and costs for violation of same, as defined by law, shall be applicable to such person."

ANTI-ADVERTISING ACT.

The 37th G. A., Chap. 136, enacted the following statute relating to liquor advertising:

An act to prohibit the solicitation of orders for the sale of intoxicated liquors by advertisements in newspapers, magazines, periodicals, letters, posters, bill-boards, circulars, order blanks, price lists, handbills or other form of written or printed matter, and making the violation a misdemeanor, and the act prevented by a writ or injunction.

Be it Enacted by the General Assembly of the State of Iowa:

SECTION 1. "Any person who shall advertise for sale upon, or in, any street car, railway car or other vehicle of transportation, or in any railway depot, hotel, boarding house, rooming house, restaurant, cafe, or at any other public place or resort, by means of any sign or billboard, or any circular, poster, price list, order blank, newspaper, magazine, periodical, letter or otherwise, within this state, any intoxicating liquor or liquids, whether malt, spirituous,

vinous or fermented liquors or liquids, or any other article, the sale or keeping for sale of which is prohibited by the laws of this state, or any of them, or advertise through any of the above described methods, or in any other way or manner display any such advertisement of the manufacture, sale, keeping for sale, of any such liquors or liquids, or furnishing the name of the person from whom, or the company or corporation from which, or the place where, or the price at which, or the method by which any such liquors or liquids may be purchased, obtained or procured; or any person who shall publish or circulate, or cause to be published or circulated any newspaper, magazine, periodical, circular, order blank, price list, letter or other written or printed matter in which any advertisement prohibited in this act shall appear, or permit any sign or billboard containing any such advertisement to remain on his premises; or any person who shall circulate, or cause to be circulated, any price lists, order blanks, or other written or printed matter for the purpose of suggesting, inducing or securing orders for the sale of any such liquors or liquids, no matter where the said liquors or liquids may have been manufactured or where the same may be located, shall be deemed guilty of a misdemeanor.”

SEC. 2. “Any building, erection, or place which is used or permitted to be used, for the purpose of printing, lettering, publishing or making in any way, any sign, poster, price list, order blank, circular, pamphlet, or circular letter, or for the publication of any newspaper, periodical or magazine which may contain any advertisement, notice, reference, editorial or story, giving information of the place where, or the person or firm from whom, or the method by which, or the price at which any intoxicating liquor or any other article the sale or keeping for sale of which is prohibited by laws of this state, may be purchased, procured, or obtained, and any building, erection or place where any such sign, poster, price list, order blank, circular pamphlet, circular letter or newspaper, periodical or magazine containing such advertisement, as herein described, are exhibited, posted or kept for distribution, sale or gift, and the machinery, type, fixtures and furniture used in printing and publishing any such advertisement, as described in this act, shall be deemed a public nuisance and may be enjoined and abated as provided in chapter six of title twelve of the code and amendments thereto, for enjoining and abating liquor nuisances.”

Approved April 5, A. D. 1917, effective July 4, 1917.

The foregoing act follows to a considerable extent a similar statute in force in the state of Alabama. The validity of the same was sustained in the case of *State v. Delaye*, 193 Alabama....; 68 So. 993; L. R. A. 1915 E 640. The right of a state to prohibit the printing of newspapers containing liquor advertising matter finds support in the case of the *State v. Bass Publishing Co.*;Me.....; 71 Atl. 894; 20 L. R. A. (ns) 495.

The Supreme Court of the United States has held that solicitation by use of the United States mails occurs at the place where the letter is received by the person to whom it is addressed. This principle has been recognized by the Supreme Court of the United States in a number of cases. See *in re Palliser*, 136 U. S. 257; *Horner v. United States*, 143 U. S. 207; *Burton v. United States*, 202 U. S. 344, et seq; *United States v. Thayer*, 209 U. S. 39; 52 L. Ed. 514. The use of the United States mail does not legalize such solicitation. *State v. Adams Express Co.* (W. Va.); 219 Fed. 794; confirmed by the ruling in the case of *Clark Distilling Company v. Western Maryland Company* and the *State of West Virginia*; decided by the Supreme Court of the United States January 8, 1917.

See the Reed "Bone-Dry" Law as set forth herein, which absolutely prohibits the depositing of liquor advertising matter in the United States mail for distribution in dry territory.

SEC. 2430 of the code. **No release from imprisonment.** "No person sentenced to be imprisoned for non-payment of fines and costs, or either of them, under the provisions of this chapter, shall be released from such imprisonment under the provisions of this code for the liberation by the sheriff of persons sentenced to pay fines and costs only, and to stand committed until sentence be performed."

SEC. 2461-a Supplemental Supplement, 1915. **"Bootlegger" defined.** "Any person who shall, by himself, or his employe, servant or agent, for himself or any person, company, or corporation, keep or carry around on his person or in a vehicle, or leave in a place for another to secure, any intoxicating liquor as herein defined, with intent to sell or dispose of the same by gift or otherwise, or who shall within this state, in any manner, directly or indirectly, solicit, take, or accept any order for the sale, shipment, or delivery of intoxicating liquor, in violation of law, shall be termed a bootlegger, and shall be guilty of a misdemeanor."

Solicitation in dry territory by use of the United States mails is prohibited by the Reed "Bone-Dry" Law, which is set forth at length in this compilation.

SEC. 2461-b Supplement, 1913. **Penalty for bootlegging.** "Every such bootlegger may be restrained by injunction from doing or continuing to do any of the acts prohibited by law,

and all the proceedings for injunctions, temporary and permanent, and for fines and costs for violation of same, as defined by law, shall be applicable to such person, company or corporation, and the fact that an offender has no known or permanent place of business or base of supplies, or quits the business after the commencement of an action shall not prevent a temporary or permanent injunction, as the case may be, from issuing."

The act to enjoin and abate a nuisance can be maintained *only* in connection with some building or place (see annotations appearing here-in following Sec. 2384 of the Code); but not so with reference to an action to enjoin a bootlegger. The statute specifically states that it is not essential that a bootlegger have a known or permanent place of business or base of supplies.

SEC. 2411 of code. Subsequent conviction after prior conviction for keeping nuisance or after being enjoined. "Any person who shall have been convicted of keeping a nuisance under this chapter, or who shall have been enjoined as herein provided, and shall again directly or indirectly engage in keeping a nuisance or selling intoxicating liquors in violation of this chapter, in any county in this state, shall, upon conviction thereof, be punished by imprisonment in the county jail not less than three months nor more than one year. But no equitable proceeding, order or judgment shall be construed as a conviction under the provisions of this section."

An analysis of the preceding section discloses that this section applies only when the accused has been previously convicted of keeping a nuisance or enjoined for the violation of the liquor laws, and is thereafter convicted of again keeping a nuisance or selling intoxicating liquors in violation of this chapter.

Compare with section 2461-m, Supplemental Supplement, 1915, relating to "persistent violator"; also section 2383, Supplement, 1913, relative to second conviction for violation of the provisions of section 2382, Supplemental Supplement, 1915, as amended.

As to the form of indictment or information in any prosecution for second or subsequent offense see sections 2424 and 2425 of the Code.

SEC. 2461-m, Supplemental Supplement, 1915. Defining persistent violator and fixing penalty. "Any person who, having once in any district court of this state been duly convicted in a criminal action for violation of any of the provisions of chapter six, title twelve, of the code and the laws amendatory thereto, and who shall hereafter be indicted, tried and convicted for a subsequent offense under the same law, shall be considered a persistent

violator of such law, and sentence for each subsequent violation of said law shall be imprisonment in the state penitentiary or state reformatory for not more than one year."

The definition of a "persistent violator" includes four prerequisites, namely:

(1) the accused must have been previously convicted in a criminal action in the district court for the violation of the liquor law;

(2) the accused must thereafter be indicted for a second violation under the same law—identical offense—

(3) the accused must thereafter be *tried* for such second offense under the same law;

(4) the accused must thereafter be convicted of the second offense under the same law.

By entering a plea of "guilty" the accused is not "tried" and therefore cannot be punished as a persistent violator.

For requisites of indictment or information in any prosecution for second or subsequent offense see Secs. 2424 and 2425 of the Code.

SEC. 2461-n, Supplemental Supplement, 1915. **Evidence of former conviction.** "On the trial of any cause under the provisions of this act, a duly authenticated copy of the former judgment in any court in which such judgment was so had, shall be competent and prima facie evidence of such former judgment, and may be used in evidence upon the trial of said cause."

See also section 2383, Supplement, 1913, for penalty for second violation of section 2382, Supplemental Supplement, 1915, as amended, relating to manufacturing, sale or keeping for sale, etc. of intoxicating liquor.

See also section 2411 of the Code for additional penalty for conviction of violation of liquor laws after having previously been convicted of keeping a nuisance or enjoined for violation of liquor laws.

SEC. 2461-f, Supplement, 1913. **Drinking on passenger cars—profane language—penalty.** "Any person who shall drink intoxicating liquors as a beverage on any passenger railway car or street car in service or who shall use profane or indecent language on such railway or street car shall be guilty of a misdemeanor."

SEC. 2461-g, Supplement, 1913. **Powers of conductor.** "Any conductor of a railway train or street car carrying passengers shall have the right to refuse to permit any person, not in the custody of an officer, to enter any passenger car on his train or street car in his charge who shall be in a state of intoxication; and shall have the further right to eject from his train at any station or from his street car at any regular stop any person found in a state of intoxication or drinking intoxicating liquors as a beverage, or using

profane or indecent language on any passenger car of his train or any street car under his charge and for that purpose may call to his aid any employe of the railway or street car company."

SEC. 2461-g1, Supplemental Supplement, 1915. **Carrying intoxicating liquors on trains, etc., prohibited.** "Any person who shall upon any railroad, street or interurban car, carry upon his person, or in any hand baggage, suit case or otherwise, for unlawful purposes, any intoxicating liquor shall be guilty of a misdemeanor."

AUTHORITY GRANTED TO CITIES TO SUPPRESS GAMBLING HOUSES, ETC.

The 37th G. A., chapter 393, enacted the following provisions granting additional power to cities and towns in the matter of law enforcement.

An act to repeal the law as it appears in section seven hundred four (704), supplement to the code, 1913, and to enact a substitute therefor, conferring power upon cities and towns to enact ordinances for the suppression, restraining and prohibiting of gambling houses, disorderly houses or places where intoxicating liquors are either kept, sold or given away, and to punish any persons transporting others to or from the same.

Be it Enacted by the General Assembly of the State of Iowa:

SECTION 1. That section seven hundred four (704), supplement to the code of Iowa, 1913, be and the same is hereby repealed and the following substitute enacted in lieu thereof:

"They shall have power to suppress, restrain and prohibit gambling, bawdy houses, disorderly houses, houses of ill-fame, road houses where lewdness is carried on, opium or hop joints or places resorted to for the use of opium or hasheesh, or places where intoxicating liquor is illegally kept, sold or given away, and to punish the keepers and inmates thereof, or persons resorting thereto, or persons who, knowing the character or reputation of such places, transport others to or from any of the above described places."

Approved April 25, A. D. 1917, effective July 4, 1917.

SEC. 2431 of the code. **Evasions.** "Courts and jurors shall construe this chapter so as to prevent evasion."

For an application of this statute see *Schideler v. Naughton*, 163 Iowa 616; 145 NW. 280.

TRANSPORTATION OF INTOXICATING LIQUOR

The subject of transportation of intoxicating liquor has been one involved in a great deal of doubt due to both state and federal legislation and to various rules announced by the supreme courts. Since the rendering of the opinion in the case of *Clark Distilling Company v. Western Maryland Railway Company and State of West Virginia*, decided January 8, 1917, 242 U. S., 311, by the Supreme Court of the United States the question has been greatly simplified. This case firmly establishes the proposition that all shipments of intoxicating liquor (including those for personal use) by interstate commerce are divested of their interstate character if they are made in violation of any law of the state in which delivery is to be made. When thus divested of their interstate character such shipments are to be treated the same as if the shipments had originated wholly within the state of delivery. The sections immediately following relate wholly to *intrastate* commerce. The matter of interstate shipments and the Webb-Kenyon law appears in this compilation under the head of "United States Liquor Laws."

Special attention is directed to the provision of the Reed "Bone-Dry" Law. It not only prohibits the use of the United States mails for the circulating of liquor advertising matter in dry territory but further provides "*whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes,*" is subject to the penalties of the foregoing law which is set forth at length in this compilation.

SEC. 2419 of the code. **Transportation to one not holding permit.** "If any express or railway company, or any common carrier, or person, or any one as the agent or employe thereof, shall transport or convey to any person within this state any intoxicating liquors, without first having been furnished with a certificate from the clerk of the court issuing the permit, showing that the consignee is a permit holder and authorized to sell liquors in the county to which the shipment is made, such company, common carrier, person, agent or employe thereof, shall, upon conviction, be fined in the sum of one hundred dollars for each offense and pay the costs of prosecution, including a reasonable attorney's fee to be taxed by the court. The offense herein created shall be held committed and complete and to have been committed in any county in the state in which the liquors are received for transportation, through which they are transported, or in which they are delivered. The defendant in a prosecution

under this section may show by a preponderance of the evidence as a defense that the character, circumstances and contents of the shipment were not known to him, or that the person to whom the shipment was made had complied with the provisions of this chapter relating to the mullet tax."

Prior to the enactment of the Webb-Kenyon Law, section 2419 was held inoperative as to interstate shipments of intoxicating liquor. *Bowman v. C. & N. W. Railway Co.*, 125 U. S., 465; *Lelsy v. Hardin*, 135 U. S., 100. By the enactment of the Webb-Kenyon Law, the restriction on interstate shipments was removed and the section above set forth again came into full force. *State v. United States Express Co.*, 164 Iowa, 112; 145 NW., 451. On April 10, 1917, the United States Circuit Court of Appeals in the case of *Hamm Brewing Company v. C. R. I. & P. Railway Co.*, after fully considering the foregoing section, together with sections 2421 *et seq* of the Supplemental Supplement, 1915, held that the Iowa statutes prohibited the shipment of intoxicating liquor to anyone except a permit holder and that the permit holder must sign the common carrier's record in person.

Prohibition being the rule in Iowa, it follows a strict construction must be given to these sections. According to section 2396 of the Code every permit holder is authorized to ship intoxicating liquor to registered pharmacists and manufacturers of proprietary medicines and all common carriers are authorized to receive and transport such intoxicating liquor upon presentation of a certificate from the clerk of the district or superior court of the county where the permit holder resides stating that such person is permitted to ship intoxicating liquors under the law of this state. In view of the provisions of the act of the 37th G. A., chapter 133, relative to manufacturers' permits, it may be inferred that a manufacturer would not be in lawful possession of intoxicating liquor purchased from a permit holder unless he complies with the provisions thereof.

Retail permit holders have no authority to transport intoxicating liquors to physicians, dentists or veterinarians. There is no provision in the law prohibiting a retail permit holder from selling to a physician, dentist or veterinarian *but the law gives him no right to transport* such intoxicating liquor; nor can a carrier lawfully do so. However, the holder of a wholesale permit, upon proper request is authorized to transport intoxicating liquors to registered pharmacists, physicians, dentists and veterinarians and common carriers are authorized to convey and deliver such shipments. Section 2401-a, Supplement, 1913, as amended by the 37th G. A., chapter 422.

Any person in any manner directly or indirectly assisting in the sale, shipment or delivery of intoxicating liquor in violation of law is termed a "bootlegger" and is guilty of a misdemeanor. Section 2461-a, Supplemental Supplement, 1915. He may also be restrained by injunction from doing or continuing to do any of the acts prohibited by law. Section 2461-b, Supplement, 1913.

By authority of an act passed by the 37th G. A. chapter 393, cities and towns were given power to suppress, restrain and prohibit gambling house, disorderly houses and places where intoxicating liquor may be illegally kept, sold or given away and to punish persons who, knowing the character or reputation of such place transport others to or from the same.

SEC. 2396 of the code. **Transportation by retail permit holder to registered pharmacists and manufacturers of proprietary medicines.** "Every permit holder is hereby authorized to ship to registered pharmacists and manufacturers of proprietary medicines intoxicating liquors to be used by them for the purposes authorized by law. All railway, transportation and express companies and other common carriers are authorized to receive and transport the same upon presentation of a certificate from the clerk of the district or superior court of the county where the permit holder resides, that such person is permitted to ship intoxicating liquors under the law of this state."

See annotations following preceding section.

SEC. 2420 of the code. **False statements to carrier—false labels—right of peace officer to examine contents.** "If any person, for the purpose of procuring the shipment, transportation or conveyance of any intoxicating liquors within this state, shall make to any company, corporation or common carrier, or to any agent thereof, or other person, any false statements as to the character or contents of any box, barrel or other vessel or package containing such liquors; or shall refuse to give correct and truthful information as to the contents of any such box, barrel or other vessel or package so sought to be transported or conveyed; or shall falsely mark, brand or label such box, barrel or other vessel or package in order to conceal the fact that the same contains intoxicating liquors, for the purposes aforesaid; or shall by any device or concealment procure or attempt to procure the conveyance or transportation of such liquors as herein prohibited, he shall, upon conviction, be fined for each offense one hundred dollars and costs of prosecution, and the costs shall include a reasonable attorney fee to be taxed by the court, which shall be paid into the county fund, and be committed to the county jail until such fine and costs are paid. Any peace officer of the county under process or warrant to him directed shall have the right to open any box, barrel or other vessel or package for examination, if he has reasonable ground for believing that it contains intoxicating liquors, either before or while the same is being so transported or conveyed."

In addition to what appears in the foregoing sections it should be noted that the Uniform Bills of Lading Act contains a provision penalizing any officer, agent, or servant of a carrier who, with the intent to defraud, issues or aids in issuing a bill of lading knowing that it contains any false statement; upon conviction for such offense the person may be imprisoned not exceeding one year or fined not exceeding one thousand dollars, or both. Section 3138-b44, Supplement, 1913. This penalty would doubtless apply to any agent of a carrier who knowingly issues bills of lading containing false statements as to the character of the goods to be conveyed in order to conceal shipments of intoxicating liquor.

SEC. 2421 of the code. Packages must be correctly labeled—penalty. “It shall be unlawful for any common carrier or other person to transport or convey by any means, within this state, any intoxicating liquors, unless the vessel or other package containing such liquors shall be plainly and correctly labeled or marked, showing the quantity and kind of liquors contained therein as well as the name of the party to whom they are to be delivered. And no person shall be authorized to receive or keep such liquors unless the same be marked or labeled as herein required. The violation of any provision of this section by any common carrier, or any agent or employe of such carrier, or by any other person, shall be punished the same as provided in the second preceding section (sec. 2419 of the code), and liquors conveyed or transported or delivered without being marked or labeled as herein required, whether in the hands of the carrier or some one to whom they shall have been delivered, shall be subject to seizure and condemnation, as liquors kept for illegal sale.”

The preceding section applies solely to shipments made within the state of Iowa. Interstate shipments are governed by Sec. 240, of the Criminal Code of the United States, relative to offenses against commerce. See page 107 hereof.

Note:—This section applies to “any common carrier or other person.”

The foregoing section is considered in *State v. Reilly*, 108 Iowa 735.

SEC. 2421-a, Supplemental Supplement, 1915. Common carriers allowed to carry for lawful purposes only. “It shall be unlawful for any railroad company, express company, or other common carrier, or for any person, corporation, steamboat or steamboat line to carry any intoxicating liquor into the state or from one point to another within the state for the purpose of delivering, or to deliver same to any person, company or corporation within the state, except for lawful purposes.”

SEC. 2421-b, Supplemental Supplement, 1915. **Common carrier must keep record of liquor shipments—delivery to consignee only.** "It shall be the duty of any railroad company, express company, or other common carrier, or corporation, steamboat or steamboat line, or person, who shall for hire carry any intoxicating liquor into the state, or from one point to another within the state, for the purpose of delivery, and who shall deliver such intoxicating liquor to any person, company, or corporation, to keep, at each station or office where it employs an agent or other person to make delivery of freight and keep records relative thereto, a record book, wherein such carrier shall promptly upon receipt, and prior to delivery, enter in ink, in legible writing, in full, the name of the consignor of each shipment of intoxicating liquor to be delivered from or through such station, from where shipped, the date of arrival, the quantity and kind of liquor, so far as disclosed by lettering on the package or by the carrier's records, and to whom and where consigned, and the date delivered. No shipment billed in whole or in part as intoxicating liquor shall be delivered to the consignee until such consignee upon such record book enters in ink, in legible writing, his full name and residence or place of business, giving the name of the town or city, and the street name and number where there is such, and certifies that such liquor is for his own lawful purposes or private consumption."

Terms defined:

"Consignor" means the person named in the bill of lading as the person from whom the goods have been received for shipment.

"Consignee" means the person named in the bill of lading as the person to whom delivery of the goods is to be made. Section 3133-b52, Supplement, 1913, under title of Uniform Bills of Lading Act.

The United States Circuit Court of Appeals held above section did not repeal section 2419 of Code by implication but was merely additional thereto. *Hamm Brewing Company v. C., R. I. & P. Ry. Co.*, decided April 10, 1917.

The words at the end of the above section "or private consumption" have been held unconstitutional for the reason that they relate to a subject different from that of the rest of the act and were not included in the title thereof. This rule has been followed in a number of cases tried in the district courts. The matter is now pending before the Supreme Court of this state.

SEC. 2421-c, Supplemental Supplement, 1915. **Delivery without receipt or to other than consignee—penalty.** "It shall be a misdemeanor for any railroad company, express company, corporation or common carrier, person, steamboat or steamboat line, or any

agent or employe of such railroad company, express company, corporation or common carrier, person, steamboat or steamboat line, to deliver any intoxicating liquor to any person other than the consignee, or without same having been receipted for as herein required, or where there is reasonable ground to believe that such liquor is intended for unlawful use, or to refuse examination of such record to any officer entitled to same as herein provided. And in no case shall any railroad company, express company, corporation or other common carrier, person, steamboat or steamboat line, be liable for damages for complying with this act."

SEC. 2421-d, Supplemental Supplement, 1915. **Record open to law enforcing officers.** "The record book required by this act shall be kept in the said local office of such carrier and shall, during business hours, be open to inspection by any peace or law enforcing officer of the state, or of any county, town or city therein."

SEC. 2421-e, Supplemental Supplement, 1915. **Construction of act.** "This act shall be construed in harmony with all federal statutes relating to interstate commerce in intoxicating liquors."

MULCT TAX

While the mulct law has been repealed yet the mulct tax is still a part of our statutes, the payment of which confers no right on the person engaged in the business of selling intoxicating liquor in violation of law, but is imposed as a penalty on the transaction of such business. Nor does payment of the mulct tax relieve the one paying it from any of the criminal or civil liabilities and penalties attached to the sale. Section 2447, of the Code. The repeal of the Mulct Law was held constitutional in the case of *State v. Hill*, —Iowa—; 158 N. W., 518.

The following sections are a part of the chapter of the code, as amended, relating to the mulct tax for the illegal sale of intoxicating liquors.

SEC. 2432 of the code. **Definition of mulct tax—who liable—payment of—lien.** "Every person, partnership or corporation, except persons holding permits, carrying on the business of selling or keeping for sale intoxicating liquors, or maintaining a place where intoxicating liquors are sold or kept with intent to sell, shall pay an annual tax, to be called a 'mulct tax,' of six hundred dollars, in quarterly installments as hereinafter provided, which tax shall be a lien upon the real property wherein or whereon the busi-

ness is carried on, or where the place for selling or keeping for sale is maintained, from the time each installment of tax as hereinafter provided shall become due and payable. In case the person carrying on the business or maintaining the place is a different person from the owner of the real property wherein or whereon the business is carried on or the place maintained, then the tax shall be payable by the person conducting such business or maintaining such place. But such owner may pay such tax at any time after the same becomes due and payable for the purpose of releasing his property therefrom. Any permit holder selling intoxicating liquors as a beverage shall pay the tax provided for in this section."

Mulct tax is to be assessed against the property, no matter if the owner be a minor. In other words, neither minors, insane persons, nor any other persons laboring under a disability, are exempted from the levy of a mulct tax upon their property. *Hopkins v. Lee*, 162 Iowa, 165; 143 NW., 1002.

SEC. 2433 of Supplement, 1913. Return by assessor of property subject to mulct tax—notice to be given. "In the months of December, March, June, and September of each year, and before the twentieth day of each of said months, the assessor of each township, town or city, or assessment district thereof, shall return to the county auditor a list of persons who are, or since the last quarterly return have been, engaged in carrying on within said township, town, city or assessment district the business of selling or keeping for sale intoxicating liquors, or maintaining any place where such liquors are sold or kept for sale, and also a description of the real property wherein or whereon such business is carried on or such place is maintained, with the name of the occupant or tenant and owner or agent. At least five days before the assessor makes the return above contemplated to the county auditor he shall give to the person found in possession of each place which he intends to list, or is required to list, and to the tenant, occupant and owner of such place a notice in writing that he intends to return such list to the county auditor charging the property itself and the owner of the property therein described and the person who owns or conducts the business with the mulct tax. But if any one of the persons to whom the assessor is herein required to give notice does not reside within the assessor's assessment district it shall be sufficient for the assessor to mail, at least five days before he make such return to the auditor, a copy of such notice to such person at his last known postoffice address; and if there is anyone whose

postoffice address cannot be ascertained by the assessor it shall be sufficient as to such person for the assessor to post a copy of such notice in some conspicuous place on the front of the property about to be listed as liable to the tax. Service of notice on any agent having general charge of the property or on any agent renting or collecting rent on the property so used or having authority to rent or collect rent on such property, or on any member of the owner's family over fourteen years of age shall be equivalent to notice to the owner of such property. The assessor shall give notice in each case in such one of the ways above provided as the circumstances of the case require, and he shall show in his return to the auditor that he has given notice and the manner of the service. The return signed by the assessor shall in all cases be admissible in evidence without further proof, and such return shall have the same force and effect as the oath of the assessor. The burden of proof shall in all cases be upon the party claiming that notice was not given. The county auditor shall furnish to the several assessors of his county, printed blanks upon which to give the notice contemplated in this amendment. Any assessor wilfully failing to comply with the provisions of this section shall pay a fine of fifty dollars and costs for each offense."

The assessor may make his return in substantially the following form:

FORM—MULCT TAX LIST.

(Since the intoxicating liquor mulct tax and the cigarette mulct tax may be returned, assessed and collected in the same manner, this form may be used for either.)

QUARTERLY RETURN FOR.....MULCT TAX FOR
 (State kind)
 THE QUARTER ENDING....., 19....

This list must be returned to the County Auditor *before* the 20th day of December, March, June and September of each year. All notices *must* be served *at least* five days before the assessor is required to return this list to the County Auditor.

Written notice of intention to return must be personally served on the occupant, tenant and owner, if residents of your jurisdiction, if non-residents mail notice to last known address. If address cannot be ascertained, post notice in some conspicuous place in front of the property about to be returned. Service of notice on agent renting or collecting the rent of returned property, or on any member of owner's family over fourteen years of age, is equivalent to notice on the owner. Be sure to describe the property accurately.

MULCT TAX

Name	SERVICE OF NOTICE		PROPERTY			
	Date	Manner	Sec. or Lot	Block or Twp.	Number or R.	Street
Occupant.....						
Owner.....						
Agent.....						
Tenant.....						

I,....., Assessor of.....
 (township or town).....County and State of Iowa,
 do hereby certify that the above is a true list of those who are, or since
 the last quarterly return have been engaged in the selling, or keeping
 for sale of (*intoxicating liquor or cigarettes*) and the property whereon
 the same has been sold or kept for sale together with the names of the
 owners or agents of the property where such business was conducted.
 I further certify that I served notice on the said parties at the time and
 in the manner above set forth.

Dated this.....day of....., 19....

Assessor.

Wilful failure to comply with the provisions of the law is punishable
 by \$50 fine for each offense. Section 2433, Supplement, 1913, and grounds
 for removal from office. Section 1258-c, Supplement, 1913, as amended
 by 37th G. A., 391, and section 2446 of the code.

Notice of intention to list for the mulct tax may be as follows:

FORM—NOTICE OF INTENTION TO RETURN FOR MULCT TAX.

Occupant
 Tenant
 Owner
 Agent

PROPERTY TO BE TAXED.

No.....Street

Addition or subdivision

	Lot Sec.	Block Twp.	Range
.....			
.....			
.....			
.....			

TO.....you are
 hereby notified that I intend to return you and the above described prop-
 erty for Assessment of the Mulct Tax for selling or keeping for sale

(*intoxicating liquor or cigarettes*) during the quarter beginning.....
19....

Dated at.....
 County and State of Iowa, this.....day of.....
 19.....

.....
 Assessor.

SEC. 2434 of the code. **Blanks.** "The county auditor shall furnish to each assessor the necessary blanks on which shall be returned the list of places where intoxicating liquors are sold, with names of the occupants, tenants and owners, and also the name of the agent, if there is an agent, of the property."

SEC. 2435 Supplemental Supplement, 1915. **Statement by citizens—service—return.** "Should the assessor for any reason fail to perform his duty, any three citizens of the county can, by verified statement on information and belief, addressed to the county auditor, procure the listing of names and places for the levy of said tax, with the same force and effect as if done by the assessor. At least five days before listing the property or names with the county auditor as contemplated in the law as it appears in section twenty-four hundred thirty-five of the supplement to the code, 1913, such citizens shall give notice in writing of their intention so to do to the same parties and in the same manner as required of the assessor in section twenty-four hundred thirty-three supplement to the code, 1913. Said notice shall, upon request of any of said three citizens be served by the sheriff of said county, and proof of the service of said notice shall be made by the sheriff, which notice and return of service thereon shall, by said sheriff, be filed with the auditor, with the list of names and property sought to be charged. Any one of said three citizens may serve such notice and make return thereof under affidavit, filed with the auditor. Said statement and return of service so filed with the county auditor shall be admissible in evidence in the same way and with the same force and effect as the return of the assessor."

In event any three citizens of the county make a return for the liquor mulct tax, the following form may be used.

FORM.

Citizens' Return of Liquor Mulct Tax.

STATE OF IOWA, } ss.
County.

To the Auditor ofCounty:

We,, and
, on oath say that we are citizens of the
 aforesaid county and State, and that on information and belief state:

That the owners, occupants and tenants of the following described
 premises, to-wit:
 (described accurately as possible)in the county
 of, State of Iowa, are engaged in the
 business of selling and dispensing, or keeping for sale intoxicating liquors,
 or in maintaining a place where such liquors are sold, dispensed or kept
 for sale, in violation of the laws of the State of Iowa; that said per-
 sons have been so engaged on said premises since theday
 of, 19.....

That and
 are the owner and agent, respectively, of the premises above described;
 that andare the
 occupants and tenants thereof.

That said persons and property should be returned as subject to the
 liquor mulct tax; that the assessor of said district has failed to so re-
 turn said persons, and property.

We further state that we have served, or caused said persons to be
 served with notice of intention to return said persons and property for
 the liquor mulct tax as provided by law, as shown by the return of
 service hereto attached and made a part hereof.

Wherefore, these affiants demand that said persons and property be
 assessed for the liquor mulct tax as required by law for the quarter be-
 ginning on theday of, 19.....

.....

Affiants.

Subscribed and sworn to by the above named affiants in my presence
 thisday of19.....

.....
 Notary Public in and for said County.

Note: While the assessor may return for the current quarter citizens
 may return for other quarters as well. National Loan and Investment
 Co. v. Board of Supervisors, 138 Iowa, 11; 115 N. W. 480.

The notice of intention to return persons and property for the liquor
 mulct tax should be in substantially the form given herein for use by
 the assessor. All three citizens should sign the notice, however.

SEC. 2437, Supplement, 1913. List certified to treasurer—
 mulct tax account. "On the last day of December, of March,
 of June, and of September in each year, the county audi-

tor shall certify to the county treasurer a complete list of the names of persons returned to him by the assessors, or entered on the sworn statements made to him by citizens as aforesaid, together with a description in each case of the real property wherein or whereon the business is carried on or the place maintained, and the name of the occupant or tenant, and the owner or agent of such property, and the county auditor shall keep in his office in books to be provided for that purpose an account to be known as the mulct tax account, in which memoranda of all moneys which may come into his hands and those of the county treasurer, from the mulct tax, shall be entered; and the county treasurer shall keep a like account and record of all mulct tax coming into his hands. Settlement of such accounts shall be made with the board of supervisors at the January and June sessions of the board, which settlement shall be published with the proceedings of the board."

SEC. 2436 of the code. **Quarterly installments—lien—penalty.** "On the first day of January, of April, of July, and of October of each year there shall be due and payable from each person returned to the county auditor by the assessor, or by three citizens as aforesaid, as a person carrying on the business of selling or keeping for sale intoxicating liquors, or maintaining a place where such liquors are sold or kept for sale, a quarterly installment of the mulct tax herein provided for, and the tax due from any person so returned by the assessors, or by three reputable citizens, shall be a lien upon the real property wherein or whereon such business is returned as being carried on or such place maintained, whether the person carrying on such business, or maintaining such place, is correctly described or not. If the installments of tax due and payable as aforesaid are not paid within one month after the same become due and payable, then a penalty of twenty per cent. shall be added thereto, together with one per cent. per month thereafter until paid. Whoever is assessed under the provisions of this chapter shall be liable at least for one quarterly installment of the tax herein provided for, notwithstanding any such person may discontinue the business when so assessed, and notwithstanding the fact he may have been in the business for a less period than three months; and if he shall continue therein for a longer period than three months, he shall be liable for an additional quarterly installment, subject to abatement on account

of discontinuance of the business before the expiration of such second or subsequent quarter."

Hopkins v. Lee, 162 Iowa, 165; 143 N. W., 1002, fully treats of the right of the county auditor to certify to the treasurer the description of the property subject to the mulct tax; also as to the payment of the same in quarterly installments.

SEC. 2438 Supplement, 1913. **Entry of tax—payments made to county treasurer.** "The county treasurer shall thereupon enter upon a book known as the mulct tax book a quarterly installment of the mulct tax, as due and payable by the person carrying on such business or keeping such place, and as a lien and charge upon and against the real property wherein or whereon such business is carried on or such place maintained, all payments of mulct tax shall be made to the county treasurer upon certificate from the county auditor showing the amount due."

SEC. 2439 Supplement, 1913. **When delinquent sales for—redemption—title in the county.** "After the expiration of one month from the date when such tax becomes due and payable, if not paid, it shall be delinquent and collectible by the treasurer in the same method as that in which other delinquent taxes are collectible, and all the provisions as to the collection of other delinquent taxes shall apply. Tax sales for such delinquent taxes shall also be made on the first Monday in June of each year, in the same manner and to the same effect as on the first Monday in December, and all the provisions of law as to tax sales in December shall apply to such sales in June. When real estate offered at tax sale under this section shall be passed for want of bid covering amount of tax due thereof, it shall be advertised and sold by the treasurer at next semi-annual tax sale. The treasurer shall appoint, prior to such sale, three appraisers who shall appraise the value of any and all property to be offered at such sale, taking into account any superior, valid lien thereon, and file a separate appraisement for each parcel; and the cost thereof shall be added to the penalty. If at the sale an amount less than the tax and penalty and less than the appraisement is offered, the property shall be sold to the county; at the appraised value, if it is less than the tax and penalty; or at the tax and penalty, if they are less than the appraised value. The provisions of sections fourteen hundred thirty-six, fourteen hundred thirty-seven, and fourteen hundred thirty-eight of the code shall apply to the redemption; but the supervisors

may allow redemption for any amount deemed advantageous to the county; and in default thereof after notice to redeem as provided by section fourteen hundred forty-one of the code, the treasurer shall execute a deed to the county, without fee, and such deed shall have, so far as applicable, all the effect as provided by section fourteen hundred forty-four of the code as to vesting in the county all the right, title, interest and estate of the former owner in and to the land conveyed. On redemption or on final sale of the property the proceeds shall be applied as provided by section twenty-four hundred forty-five of the code. While thus acquiring title the county, to protect its interest, may bid in the property at ordinary tax sale and acquire title under the same terms and conditions as other tax sale purchasers."

SEC. 2440 of the code. Collection by selling personal property. "At any time after the quarterly installment of such taxes becomes delinquent, the treasurer may collect the same by seizing and selling any personal property used in connection with the business or in maintaining the place."

SEC. 2441 of the code. Application to remit mulct tax. "At the meeting of the board of supervisors next following the listing as aforesaid, application may be made to remit the tax, by petition duly verified and filed with the county auditor at least eight days before the time set for the consideration of the case, and notice for the same length of time must be served on the county attorney in writing. The averments of the petition shall be deemed denied, and witnesses may be examined, and the chairman of the board, or, in his absence or inability to act, any member of the same may administer an oath in the same form and of the same effect as to penalties for testifying falsely as if administered in court."

SEC. 2442 of the code. Hearing on application to remit tax—evidence—appeal. "On the application to remit the tax, the owner of the property may be heard in support of the same, and evidence of the general reputation of the place shall be admissible, and if upon the hearing of the case it shall be shown that the petitioner, his agent or tenant has paid a retail liquor dealer's internal revenue tax to the United States, covering any portion of the time and premises as set forth in the listing of said real estate, it shall be prima facie evidence that the person and property are subject to the tax. If upon said hearing it be found

by a majority vote of the board of supervisors that the tax is proper, it shall stand, otherwise it shall be remitted, and the board shall enter its order on its record. Either the petitioner or the county attorney may appeal to the district court, and if the petitioner appeals he shall be required to give bond for the costs which have accrued, or may accrue in the further progress of the case. Notice of the appeal shall be served upon the appellee or his attorney, and upon the county auditor, within ten days after the decision by the board of supervisors; whereupon the auditor shall file a full and complete transcript of the record of the proceedings in said cause, together with the original papers, in the office of the clerk of the district court in said county. In case the finding of the board of supervisors shall be against the tax, and the county attorney shall fail to take an appeal to the district court within ten days from such finding as above provided, any three citizens of the county may take such appeal within ten days thereafter, upon giving a good and sufficient bond for costs, and the same proceeding shall be had as if the appeal had been taken by the county attorney. The auditor shall charge and tax as fees for the transcript and writing up of the record ten cents per hundred words."

SEC. 2443 of the code. **Remission of tax—how entered—costs.** "If the tax is remitted by the board of supervisors, and no appeal from such action is taken, or if on an appeal to the district court the tax is ordered to be remitted, the auditor shall certify the fact to the treasurer, who shall mark the tax on his books as remitted, and shall not collect the same, and if an installment of tax has already been paid, it shall be refunded by the board of supervisors. If any sale of real property has been made for a tax which is afterwards remitted, the title of the purchaser shall become void and the amount paid by such purchaser shall be refunded by the county. If any application for the remission of the tax is refused by the board of supervisors, and no appeal therefrom is taken, or if on appeal to the district court the tax is confirmed, the costs of the whole proceeding shall be certified by the auditor to the treasurer, and by him added to the tax, and collected as the remainder of such tax."

SEC. 2444 of the code. **Trial on appeal—judgment against property.** "On the appeal the trial shall be conducted as an equitable cause, and the first term shall be the trial term. Should

it appear, either on the trial before the board of supervisors or in the district court, that there have been sales of intoxicating liquors made in or upon the premises listed for taxation, the tax shall be confirmed against the person, corporation or partnership conducting the business and if it appears that the wrong name or an alias has been used then the record and assessment list may be amended and the true name inserted; and if it shall appear at such trial that the owner or his agent knew, or by the use of reasonable care or diligence might have known, of the sales of intoxicating liquors as aforesaid, the tax shall be confirmed against the property by an order of record, and the clerk of the district court shall certify such fact to the county auditor, with the amount of costs made in the trial of the case."

SEC. 2445, Supplement, 1913. **Division of mulct tax between general county fund and municipality in which business taxed is conducted.** "The revenue derived from the tax provided for in this chapter shall be paid into the county treasury, one-half to go into the general county fund, and the remainder to be paid over to the municipality in which the business taxed is conducted. If such business is conducted outside the limits of a city or town then the tax now in hands of county treasurers, or that shall hereafter be collected from such business, shall be apportioned as follows: One-half to the general county fund and the other one-half to the clerk of the township in which such business is conducted. The clerk of the township shall apportion the amount so received by him equally among the road supervisors of the territory of the township outside of the city or town, to be by said road supervisors expended for the improvement of the roads of the districts. In counties where a tax on the traffic in intoxicating liquors is paid into and belongs to the county treasury, the board of supervisors may transfer the same or any part thereof to the county road fund and expend the same upon the roads of the county; and that portion of such revenue derived from such business conducted inside the limits of a city including cities under special charter or town, the board may expend all or any part thereof upon the permanent improvement of streets within such city or town abutting upon agricultural or horticultural lands not subject to taxation for general municipal purposes."

SEC. 2446 of the code. **Duty of county attorney.** "It shall be the duty of the county attorney of each county to see that the provisions of this chapter relating to the mulct tax are enforced, and the district court or any judge thereof shall suspend or remove from office any county attorney who shall wilfully refuse or neglect to perform any such duty. Such suspension or removal may be made upon application of any citizen residing in the county, but shall not take place except upon due notice to said officer and trial in court, and the provisions of this section shall apply to assessors, county treasurers and members of boards of supervisors whose duty it is to enforce them."

SEC. 2447 of the code. **Effect of payment of mulct tax.** "Nothing contained in this chapter so far as it relates to the mulct tax shall be in any way construed to mean that the business of the sale of intoxicating liquors is in any way legalized, nor as a license, nor shall the assessment or payment of any tax for the sale of liquors as aforesaid protect the wrongdoer from any penalty now provided by law, except as provided in the next section."

All bars to the assessment of the mulct tax were repealed by the 36th G. A. See section 2448-a, Supplemental Supplement, 1915.

CRIMINAL PROCEDURE

There are three methods in which prosecutions may be started for violation of the laws of the state:

1. By filing an information before a magistrate. This is the exclusive method for all offenses less than a felony in which the punishment does not exceed a fine of \$100 or imprisonment for more than thirty days.
2. In cases where the penalty exceeds thirty days in jail or \$100 fine, by the issuance of an indictment by a grand jury.
3. By prosecution, in certain cases, on information filed by the county attorney.

If it were always necessary for the complainant to go before a magistrate and make information, and for the justice to prepare a warrant for the arrest of the accused, many offenders would escape while this was being done. The statute provides that an arrest may be made by a peace officer or by a private person.

A peace officer may make an arrest in obedience to a warrant delivered to him, or he may do so without a warrant; provided, first, for a public

offense committed or attempted in his presence; second, when a public offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it. Section 5196, of the Code.

A private person may make an arrest without a warrant; first, for a public offense committed or attempted in his presence; second, when a felony has been committed and he has reasonable ground for believing that the person to be arrested has committed it. Section 5197, of the Code.

A magistrate may orally order a peace officer or a private citizen to arrest anyone committing or attempting to commit a public offense in the presence of such magistrate, which order shall authorize the arrest. Section 5193, of the Code.

The term "peace officer" is defined on page 120 hereof; likewise the term "magistrate" is defined on page 113 hereof; a "public offense" is the violation of any statute, for which a penalty attaches by fine or imprisonment.

Any person making an arrest may orally summon as many persons as he finds necessary to aid him in making the arrest, and all persons failing to obey such summons shall be guilty of a misdemeanor. Section 5203 of the Code.

Since a large part of the prosecutions for the violation of the liquor laws of Iowa are instituted in magistrate courts, or justice courts, it has been deemed expedient to set forth briefly the method of procedure and to insert some of the forms most essential to successful enforcement of the law. The forms given herein have been prepared for a justice court but they may be altered so as to be used in any magistrate's court.

Suppose a citizen complains to you that A——— is "bootlegging" in your county, and is not in the custody of an officer. Your first step should be to get him to file a complaint or a preliminary information which he must sign and swear to. This complaint should be in substantially the following form.

FORM.

Complaint or Preliminary Information.

THE STATE OF IOWA,	} Before X.....	Justice of the Peace in and for
vs.		
A.....		
Defendant.	K..... Township,	
	M..... County, Iowa.	

The defendant A..... is accused of the crime of bootlegging, for that the defendant... on the.....day of....., 19...., in the Township of K..... in the county and State aforesaid, did then and there solicit, take and accept orders for the sale, shipment and delivery of intoxicating liquor, from one John Doe con-

trary to the Statutes in such cases made and provided and against the peace and dignity of the State of Iowa.

B.....
Complainant.

Subscribed and sworn to by B....., before me
this.....day of....., 19....

X.....
Justice of the Peace.

If the crime charged be some offense other than bootlegging it should be named in the information and the acts complained of briefly described.

Peace officers *must* see to it that the laws relating to intoxicating liquor are enforced. When informed of any violation, or if they have reason to believe the law has been violated, and that proof can be had of such violation, it is their duty to file information against the offending party before a magistrate. Failure to do so is punishable by fine and by removal from office. See section 2428 of the Code.

For definition of "peace officer" see page 120 hereof.

If the accused has been taken into custody before an information has been filed, the complaining witness should file such information as soon as possible after the arrest.

In event the complainant does not know the name of the accused he should describe him to the best of his ability.

After receiving the information in substantially the form above given the justice, or magistrate may issue a warrant for the arrest of such person. The warrant must be substantially in the following form:

FORM.

Warrant of Arrest—Justice of the Peace.

STATE OF IOWA, } ss.
M.....County.

To any Peace Officer in the State:

Preliminary information upon oath having been this day laid before me that the crime of (designating it) has been committed, and accusing A..... thereof:

You, are therefore, commanded forthwith to arrest the said A..... and bring him before me at (naming the place) or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated this.....day of....., 19....

*Let the accused when X.....
arrested, be admitted to Justice of the Peace in and for
bail in the sum of \$. K.....Township,
if he desires to give bail. M.....County, Iowa.

*The justice must fill in the amount of bail if the crime charged is a misdemeanor.

A private person who has arrested another for the commission of an offense must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer, who may take the arrested person be

This warrant may be delivered to any Peace Officer for execution and served in any county in the state. If the offense stated in the warrant be a felony, the officer making the arrest must take the accused before the magistrate who issued it at the place mentioned in the warrant, or, in event of the absence or inability of the magistrate to act, before the nearest and most accessible magistrate in the county in which the warrant was issued.

In event bail is not given as above provided the accused must be taken before the magistrate or clerk without unnecessary delay, and the officer must at the same time deliver to the magistrate or clerk the warrant with his return thereon endorsed and subscribed by him with his official title.

The bond guarantying the presence of the defendant at the preliminary hearing should be in substantially the following form:

Recognizance on Adjournment of Preliminary Examination.

(We, A..... and B....., do hereby jointly and severally acknowledge ourselves indebted to the State of Iowa in the

sum of.....dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, and legal representatives firmly by these presents.

The condition of this obligation is such, that whereas, an adjournment has this day been ordered by (name justice), a justice of the peace in and for said county, of certain proceedings before him on preliminary information against said A..... charged with the offense of (name the offense) to the.....day of....., 19...., at..... o'clock,M., of that day, at the office of the said (name justice). Now, if the said A.....shall appear at the said time and place to which the said examination is adjourned and abide the order of said court in the premises, then this obligation to be void, otherwise to be and remain in full force and virtue.

Dated this.....day of....., 19....

A.....
B.....

STATE OF IOWA, }
M.....County. } ss.

B.....; being duly sworn says, that he is a resident of M.....county, State of Iowa; that he is worth the sum ofdollars over and above his debts and liabilities, (which must be double the penalty), and has property of the value ofdollars (which must be double the penalty), not exempt from execution.

B.....

Subscribed and sworn to by B.....before me and in my presence this.....day of....., 19....

X.....
Justice of the Peace in and for
K..... Township,
M.....County, and State of Iowa.

I hereby approved of the foregoing recognizance and of the surety therein.

X.....
Justice of the Peace.

Dated this.....day of....., 19....

At the preliminary examination the magistrate may require witnesses, either for the state or for the accused, to appear at the examination and to be examined in the presence of the accused. The method of taking the evidence in such cases is fully provided for in the Code in sections 5221 to 5225. The magistrate must keep written minutes of the substance of the testimony given by each witness together with his name, place of residence, business or profession of each witness, and the amount he is entitled to for mileage and attendance. By agreement of the parties or their attorneys such testimony may be taken down in shorthand.

The subpoena in criminal cases may be in the following form:

Subpoena in Criminal Cases.

STATE OF IOWA, }
M.....County. } ss.

To (insert the names of witnesses.)

In the name of the State of Iowa:

You (and each one of you when more than one), are hereby required to appear before X....., a justice of the peace in and for K.....township, M.....county, Iowa, at his office in said township, on the.....day of....., 19...., ato'clock,M., to give evidence in a case between (the State of Iowa) Plaintiff, and A....., defendant, on the part of the said (plaintiff or defendant), and this you will in no wise omit under the penalty of the law.

Witness my hand at.....this.....
day of....., 19....

X.....
Justice of the Peace in and for
K..... Township,
M.....County, and State of Iowa.

Officer's Return.

STATE OF IOWA, }
County of M..... } ss.

I do hereby certify that on the.....day of....., 19...., at the township (or village, or city, etc., as the case may be) of..... in said county, I personally served the within (or annexed) subpoena on K....., witness (or witnesses), therein named, by then and there delivering to said witness (or witnesses and each of them) a true copy of said subpoena, and by showing him (or them) personally the said original subpoena.

Dated this.....day of....., 19....

P.....
Constable.

Fees: Service \$.....
Mileage \$.....
Total \$.....

There are just two things a magistrate should determine before binding the defendant over to the grand jury; first, that a crime triable on indictment has been committed, and, second, that there is sufficient reason to believe the defendant guilty of the crime. The law does not require the magistrate to find the defendant guilty beyond a reasonable doubt.

After the examination is closed, the magistrate must attach all of the papers in the case together and attach a certificate thereto in substantially the following form:

FORM.

Certificate to Magistrate's Return of Preliminary Examination.

THE STATE OF IOWA, }
 M.....County. } ss.

I, X....., a justice of the peace in and for said county, do hereby certify that on the.....day of....., 19...., at my office in K..... township, in said county, I commenced the preliminary examination of A....., therefore arrested and brought before me on the charge of (name the offense), and I did on the same day conclude said examination and it appearing to me by the within minutes that an offense triable on indictment (stating generally the nature thereof), has been committed, and that there is sufficient cause for believing the defendant guilty thereof, I order that he be held to answer the same, and I have admitted him to bail to answer thereto by the bail bond hereto attached; and I do further certify that the minutes of said examination hereto attached are in all respects true.

Witness my hand this.....day of....., 19....

X.....
 Justice of the Peace in and for
 K..... Township,
 M.....County, and State of Iowa.

In event the justice finds that the defendant should be discharged he should enter in his certificate the following notation: "There being no sufficient cause for believing the defendant guilty of the offense herein mentioned, I order him to be discharged."

Where the defendant is unable to give bail the certificate should provide that the defendant be committed to jail. The order should be in the following form: "And that he be committed to the county jail until he give bail in the sum of \$....." The justice should name the amount if it is a bailable offense; otherwise the justice should enter in his certificate "without bail."

If the magistrate finds the accused should be bound over to the grand jury and the accused is unable to furnish bail the magistrate should make out a warrant of commitment and deliver it with the accused to the officer to whom he is committed, or if the officer be not present, to any peace officer who shall deliver the accused into the proper custody, together with the warrant of commitment. The warrant may be in the following form:

FORM.

Warrant of Commitment.

STATE OF IOWA. }
 M.....County. } ss.

To the Sheriff of M.....County:

An order having been this day made by me, that A.....be held to answer upon a charge of (state the offense) you are commanded

to receive him into your custody and detain him in the jail of the county until he be legally discharged.

Dated this.....day of....., A. D., 19....

X.....
Justice of the Peace in and for
K..... Township,
M.....County, and State of Iowa.

Should the justice admit the defendant to bail when he binds him over to the grand jury, the bail bond should be in substantially the following form:

FORM.

Bond for Appearance to District Court.

THE STATE OF IOWA, }
M.....County. } ss.

An order having been made on the.....day of....., 19...., by X....., a justice of the peace of the township of K....., that A..... be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been duly admitted to bail, in the sum of.....dollars.

We, E..... (stating his place of residence and occupation), and G..... (stating his place of residence and occupation), hereby undertake that the said A..... shall appear at the District Court of the county of M..... at the next term thereof, and answer said charge, and abide the orders and judgment of said court, and not depart without leave of the same, or, if he fail to perform either of these conditions, that we will pay to the State of Iowa the sum ofdollars (inserting the sum in which the defendant is admitted to bail).

E.....
G.....

(Justification as in form appearing on page 84 hereof.)

Acknowledged before, and accepted by me as (good), in the township of K....., in the county of M....., Iowa, thisday of....., 19....

X.....
Justice of the Peace in and for
K..... Township,
M.....County, and State of Iowa.

Each material witness examined by the magistrate on the part of the state may be required to enter into a written undertaking to the effect that he will appear and testify at court to which the accused is bound to answer, or will forfeit the sum of \$100. Section 5232 of the Code. If the magistrate has reason to believe that the witness will not fulfill his undertaking he may require sureties to be given, or if the witness refuses to enter into this undertaking, the magistrate may commit him to jail until he complies with the order or is legally discharged. The undertaking of a witness to appear and testify may be in the following form:

FORM.

Undertaking of Witness to Appear and Testify.

THE STATE OF IOWA, }
M.....County. } ss.

Whereas, I, the undersigned G....., was a material witness on behalf of the State of Iowa, on a preliminary examination just concluded before X....., a justice of the peace of said county, wherein A..... was charged with the offense of (name the offense) and whereas, the said justice has held the said A..... to answer said offense, and the said justice having required me to enter into an undertaking as by statute in such case made and provided:

Now, therefore, I, the said G....., do hereby undertake and promise the said State of Iowa that I will appear at the court to which the defendant is bound to answer, when required in the further progress of the cause and that I will not evade or attempt to evade the service of the subpoena, but if I do so I will forfeit the sum of \$100 to the State of Iowa.

Witness my hand this.....day of....., 19.....

G.....

Where surety is required, the foregoing form may be changed accordingly, adding justification as suggested on page 84.

When the magistrate has discharged the accused, or held him to answer an indictment the magistrate must return to the District Court of his county, on or before its opening, on the first day of the next term, and as soon after the closing of the examination as possible, all of the papers used or required by law to be kept at the hearing, together with the undertaking of bail for the appearance of the defendant, and the undertaking of witnesses as required by law. Code, section 5236.

If it appear from examination that a public offense has been committed which is not triable on indictment (viz.: an offense punishable by a fine not exceeding \$100 and by imprisonment not to exceed thirty days), but can be tried by information only, and that there is sufficient reason for believing the accused guilty of the offense charged, the magistrate should retain all the papers and immediately order an information to be filed against the accused before him. If the magistrate finds he has no jurisdiction to try and determine the cause he should endorse on, or annex to, the minutes of the examination an order, signed by him to the following effect: "It appearing to me by the within minutes that the offense of (here state its name or nature generally) has been committed, and that there is sufficient reason for believing the defendant guilty thereof, I order that information be filed against him therefor before (here name some magistrate who is the nearest and most accessible in the same county, giving the name of the office), and that the defendant be committed to any peace officer to be taken before such magistrate." Section 5237 of the Code.

The foregoing section relates solely to offenses which are *not* triable on indictment.

In case the magistrate finds he has no jurisdiction and the offense is one *not* triable on indictment he should cause each material witness on the part of the state to enter into a written undertaking, conditioned to the effect that he will appear forthwith before the magistrate before whom the accused is being taken, or that he will forfeit the sum of \$50. This undertaking may be in substantially the form given by the witness to appear before the District Court. The justice should then deliver to the peace officer all of the papers in the case who shall forthwith proceed as directed by the magistrate, and take the defendant before the magistrate named in the order. The peace officer should deliver all of the papers and the custody of the accused to the magistrate. The officer should make his return in substantially the following form:

STATE OF IOWA, }
M.....County. } ss.

I do hereby certify that in pursuance of the order hereto attached, made by X....., a justice of the peace in and for said county, and this day delivered to me for service by said justice, I did on this day take the defendant therein named, to-wit: A....., into my custody, and now have him here present in my custody subject to the order of this court, as also all the papers delivered to me by the said justice, X....., which said papers are hereto attached.

Dated this.....day of....., 19.....

P.....
Constable.

The justice should make an entry in his docket of the case, or of the preliminary examination, in substantially the form given herein. He should vary this according to the facts of each particular case.

DOCKET.

Entry on Preliminary Examination.

THE STATE OF IOWA, }
Plaintiff, }
vs. } County of M.....
A..... }
Defendant. }

Be it remembered, that on this.....day of....., 19....., B..... filed with me a preliminary information on oath charging the defendant, A..... with the commission of the offense of (here name the offense, and set forth the facts): I hereupon proceeded to examine the said informant and one G....., a witness produced by him, and took their affidavits in writing touching the facts in the case; and being satisfied therefrom that the offense had been committed, and that there was reasonable ground to believe the defendant guilty thereof, I issued a warrant for the arrest of said defendant, and delivered the same to F....., a constable of said county of M..... for service.

And now on this.....day of....., 19....., the said P....., constable, brings the said defendant before me by virtue of said warrant; whereupon I informed the defendant of the of-

fense with which he is charged, and of his right to the aid of counsel, as by statute required. Thereupon the defendant asked time to procure counsel, and I therefor adjourned the cause, on motion of said defendant, until the.....day of.....19...., at.....o'clock,M., and the defendant having given ample security for his appearance at the time and place to which said examination is adjourned, he was released from the custody of said officer.

And now on this.....day of....., 19...., the time fixed for the examination in this case, the said B..... appeared in behalf of the State, together with F....., counsel for said plaintiff, and the said defendant also appeared in person, with J....., his counsel. I thereupon read to the defendant the affidavits of the informant, and of the said G....., witness.

I thereupon proceeded to the examination of said charge, and B..... and G..... were sworn and examined on the part of the plaintiff. The examination of the witnesses on the part of the State being closed, I informed the defendant of his right to make a statement explaining the charge made against him, or that he might waive the same, and that such waiver could not be used against him on the examination or on trial. Thereupon the defendant proceeded to make a statement, as provided by statute, which was read to him as it was taken down in writing and the same was signed by him and filed by me in the case.

Thereupon the defendant introduced as witnesses in his behalf (name the witnesses) who were sworn and examined.

The examination being closed, and it appearing to me therefrom that a public offense, triable on indictment, has been committed, and that there is sufficient reason for believing the defendant guilty thereof, it is therefor hereby ordered and adjudged that the said defendant be held to answer the same. And it is further ordered that the said defendant be admitted to bail in the sum of.....dollars to answer said charge at the next term of the District Court in and for said county; and that he be committed to the jail of said county until he gives such bail.

The said defendant having failed and neglected to give such bail, I thereupon made out my warrant of commitment as provided by statute, and delivered the same, with the said defendant, to P....., a constable of said county, and have also made my return of the papers and proceedings on such examination, as by the statute in such case made and provided.

Items of costs and fees: (here insert the same in full.)

X.....
Justice of the Peace in and for
K..... Township,
M.....County, and State of Iowa.

Should the defendant be able to furnish bail while he is in jail, it is the duty of the court, clerk or magistrate who approves the bail to make

an order for the discharge of the defendant. This order should be in substantially the following form and directed to the officer having the defendant in his custody.

FORM.

Order of Discharge.

STATE OF IOWA,
M.....County. } ss.

To the Sheriff of M.....County:

A....., who is detained by you on commitment, to answer a charge for the offense of (here designate it generally), having given sufficient bail to answer the same, you are commanded forthwith to discharge him from custody.

Dated this.....day of....., 19.....

X.....
Justice of the Peace in and for
..... Township,
M.....County, and State of Iowa.

The method of procedure in issuing a search warrant is fully set forth in this compilation under the head of "Search Warrants" where the necessary forms are given. Such proceedings are criminal in nature and the authority of the justice extends to all such cases regardless of the value of the liquor or property seized under the warrant. *State v. Arlen*, 71 Iowa, 216.

In event the case before the justice is one *not* triable on indictment he should proceed to trial, unless a change of venue is taken, in the manner provided in Chapter 46 of the Code, beginning with Sec. 5575.

SPECIAL AGENTS

The 36th G. A. enacted a statute granting to the Governor power to appoint special state agents to aid in the capture, detention, arrest and prosecution of persons committing crimes or violating laws of this state. The statutes appear as sections 65-a-b-c-d, of the Supplemental Supplement, 1915.

The 37th G. A., Chap, 231, enacted a statute empowering the Governor or Attorney General to call upon any peace officer to render assistance in the procuring of evidence and the prosecuting of law violators. The act is set forth in full in this compilation.

SEC. 65-a, Supplemental Supplement, 1915. **Governor to appoint special agents.** "The governor is hereby authorized to appoint not more than four special agents, whose duty it shall be, under the direction of the governor, to aid in the capture, deten-

tion, arrest and prosecution of persons committing crime or violating the laws of this state."

It is no defense to a prosecution for the illegal sale of intoxicating liquors to show that the purchase was made by a detective or special state agent as above provided for. *State v. See*, Iowa; 158 N. W. 667.

SEC. 65-b, Supplemental Supplement, 1915. Power of special agent—to be assisted by other officers. "Said special agent or agents shall have the same power in any part of the state to make arrests and file information, and otherwise enforce the law of the state, as any county attorney, sheriff, marshal, constable, police officer or other peace officer in each county, and in the performance of his duty he may call to his aid any county attorney, sheriff, marshal, constable, or other police or peace officer."

SEC. 65-c, Supplemental Supplement, 1915. Salary—by whom fixed—expenses—tenure of office. "Such special agent or agents shall receive such salary as shall be fixed by the governor by and with the approval of the executive council, to be paid from any moneys in the general fund not otherwise appropriated, and shall also receive his or their actual expenses incurred in the discharge of his or their duties, the same to be audited and paid by the executive council in the same manner as expenses of state officers; provided, however, that not more than one special agent may be employed for a period in excess of thirty days without receiving the consent of the executive council."

SEC. 65-d, Supplemental Supplement, 1915. Regular officers not relieved of any duty. "Nothing in this act shall be construed to relieve any county attorney, sheriff, marshal, constable, police officer or other peace officer from any duty now or hereafter enjoined upon him by law."

New law enforcing measures—authority of Attorney General to call peace officers and others to his aid.

The 37th G. A., Chap. 231, enacted the following important bill granting to the Governor and Attorney General important additional power in the matter of law enforcement:

House File No. 62.

An act to amend the law as it appears in section two hundred eight-a (208-a), supplement to the code, 1913, relating to the powers and duties of the governor and to the powers and duties of the attorney general by authorizing them to require the services of peace officers and to employ the services of other persons from time to time as such services may be required for the

proper enforcement of the laws or the performance of their duties, and to prescribe the powers and duties of such officers, and to appropriate funds for their compensation and expenses.

Be it Enacted by the General Assembly of the State of Iowa:

Section 1. That the law as it appears in section two hundred eight-a (208-a), supplement to the code, 1913, be and the same is hereby amended by adding thereto at the end thereof the following:

"10. Whenever, in the judgment of the governor or the attorney general, the interests of the state require it, they or either of them may call to their aid any peace officer in the state for the purpose of rendering assistance in procuring evidence, ferretting out crime, prosecuting law violators or otherwise enforcing the law and for such purposes they or either of them may also employ the services of any person, provided, however, that not to exceed the sum of twenty-five thousand dollars (\$25,000.00) shall be expended for the compensation and expenses of such officers or persons whose services are so required in any one year, which compensation and expenses shall be paid by the state from funds not otherwise appropriated. All items of expenses incurred by any person appointed or employed by the governor shall be certified to by him, and all items of expense incurred by persons appointed or employed by the attorney general shall be certified to by him, and in either event claims or such expenses shall be passed upon by the board of audit."

"Sec. 2. It is hereby made the duty of any peace officer of the state to comply with the request of the governor or that of the attorney general or either of them, and to render to either of them such assistance as may be required in any part of the state. Such peace officers when so called, or other persons when so appointed, shall have the same powers in any part of the state as the sheriff of the county in which such peace officer or person is acting."

"Sec. 3. This act being deemed of immediate importance shall be in full force and effect upon its passage and publication in The Des Moines Register and The Des Moines Capital, newspapers published in Des Moines, Iowa."

Approved April 12, A. D. 1917, effective April 18, 1917.

THE RED LIGHT INJUNCTION LAW

The statutes relating to this subject are set forth at length in this compilation for the reason that they are in a general nature similar to the liquor injunction laws, and for the further reason that in many cases both laws are violated by the same acts and unlawful conduct.

These statutes as they now appear are largely a re-enactment of the same corresponding sections appearing in Supplement to the Code, 1913, the latter being held, in the case of *State v. Lynch*, 169 Iowa 148; 151 N. W. 81, to never have been legally enacted, due to the failure of the speaker of the house to sign the enrolled bill.

Similar statutes in other states have been held constitutional. See *State v. Lane*, 147 N. W. (Minn.) 951; *State v. Gilbert*, 147 N. W. (Minn.) 953; *State v. Jerome*, 141 Pac. (Wash.) 753; *State v. Fanning*, 147 N. W. (Neb.) 215; *Pon v. Wittman*, 147 Cal. 282.

The keeping of a house of ill fame near any military camp is punishable by virtue of Sec. 13 of H. R. 3545, 65th Congress, First Session. The law is set out in full in this compilation.

The Iowa Red Light Injunction Law is as follows:

SEC. 4944-h1, Supplemental Supplement, 1915. House of prostitution and equipment thereof declared a nuisance. "Whoever shall erect, establish, continue, maintain, use, own or lease any building, erection or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building, erection or place, or the ground itself, in or upon which such lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such public nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided."

SEC. 4944-h2, Supplemental Supplement, 1915. Abatement of nuisance by injunction—procedure. "Whenever a nuisance is kept, maintained or exists, as defined in this act, the county attorney or any citizen of the county or any society, association or body, incorporated under the laws of this state, may maintain an action in equity in the name of the state of Iowa, upon the relation of such county attorney, citizen, or corporation to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same from further conducting or maintaining the same and the owner or agent of the building or ground upon

which said nuisance exists from further permitting such building or ground or both to be so used. The defendants shall be served therein as in other actions and in such action the court, or judge in vacation, shall upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise as the complainant may elect, unless the court or judge by previous order, shall have directed the form and manner in which such evidence shall be presented. Where a temporary injunction is prayed for, the court or judge in vacation, on the application of plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical instruments and movable property used in conducting the alleged nuisance, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon. The restraining order may be served by handing to and leaving a copy of said order with any person in charge of said property or residing in the premises or apartment wherein the same is situated, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such premises or apartment where such nuisance is alleged to be maintained, or by both such delivery and posting. The officer serving such restraining order shall forthwith make a return into court and inventory of the personal property situated in and used in conducting or maintaining such nuisance. Any violation of such restraining order shall be a contempt of court, and where such order is so posted, mutilation or removal thereof, while the same remains in force, shall be a contempt of court, provided, such posted order contains thereon or therein a notice to that effect. Three days' notice in writing shall be given the defendants of the hearing of the application for temporary injunction, and if then continued at the instance of defendant, the temporary writ, as prayed, shall be granted as a matter of course. Each defendant so notified shall serve upon the complainant or his attorney a verified answer on or before the date fixed in said notice for said hearing, and such answer shall be filed with the clerk of the district court

of the county wherein such cause is triable, but the court may allow additional time for so answering, providing such extension of time shall not prevent the issuing of said temporary writ as prayed for. The allegations of the answer shall be deemed to be traversed without further pleading. When an injunction has been granted, it shall be binding on the defendants throughout the judicial district in which it was issued, and any violation of the provisions of the injunction herein provided shall be a contempt as hereinafter provided."

Forms for proceeding against houses of ill-fame are set forth as follows:

FORM.

Original Notice in Red Light Injunction Actions.

In the District Court of the State of Iowa in and for.....County.
.....Term, A. D., 19....

The State of Iowa, ex rel.,

.....

Plaintiff,

vs.

.....
the premises described in this petition and the buildings thereon, together with all furniture, fixtures and appliances therein used,

Defendants.

} Original Notice and Notice of
Hearing of Application for
Temporary Injunction.

You are each hereby notified that there is now on file in the office of the Clerk of the District Court of Iowa, in and for.....County, the petition of the plaintiff in the above entitled cause, alleging that the following described premises, to-wit:.....(describe accurately)..... and the buildings and erections thereon, together with the furniture and fixtures therein, constitute a nuisance by reason of the fact that the same are kept and maintained by you as a house of ill fame and place resorted to for prostitution and lewdness. Said petition asks for the abatement of said nuisance and that you be enjoined and restrained from continuing to maintain the same and for general equitable relief. For further particulars see said petition.

You are further notified that unless you appear in said cause on or before noon of the second day of the next term of said court, to be begun and held at the court house in.....County, Iowa, commencing on the.....day of.....A. D., 19...., default will be entered against you and a decree entered enjoining and restraining you as prayed in said petition; and you are further notified that said petition prays for the issuance of a temporary injunction and that by an order of one of the Judges of said court the time for hearing on the application for the temporary injunction has been fixed for the.....day of....., 19...., at.....o'clock a. m., before the Hon.....

one of the Judges of said court, said hearing to be had at the court house in said county, at which time you are at liberty to appear and show cause, if any, why said temporary injunction should not issue.

.....
Attorneys for Plaintiff.

FORM.

Petition.

In the District Court of the State of Iowa, in and for.....County.
..... Term, 19....

State of Iowa, ex rel.,

Plaintiff,

vs.

No. Equity

.....
and the premises described in this petition and the buildings thereon together with all furniture, fixtures, musical instruments and movable property used therein,
Defendants.

Petition in Equity for
Injunction.

The plaintiff states:

Par. 1. That the relator.....is a citizen ofCounty, Iowa, and as such is interested in the good order, peace and welfare of the inhabitants of said county, and authorized by law to bring this action.

Par. 2. That the defendants.....in the county and state aforesaid, ha....erected, established, continued, maintained and used a building, erection and place situated on the premises herein described as follows, to-wit:.....(describe accurately).....for the purpose of lewdness, assignation and prostitution, in violation of law and as a public nuisance, and that said premises have been within the year last past and are being used for said purposes.

Par. 3. That the defendant.....is the owner and has control of the premises hereinbefore described, and has had personal and constructive knowledge of all the matters and things set forth in paragraph 2 hereof.

Par. 4. That by reason of the facts hereinbefore set forth the premises heretofore described, and the furniture, fixtures, musical instruments and movable property used therein constitute a nuisance, and the defendantha....established and.....keeping, using and maintaining such nuisance with the knowledge of the aforesaid owner.

Par. 5. That unless restrained by order of court the said defendants will continue to use, maintain and keep the said premises for the purposes herein complained of, and the same will continue to be a nuisance, to the irreparable injury of plaintiff and the citizens of said county.

Wherefore, plaintiff prays that said nuisance be abated and perpetually enjoined; that said premises and the building thereon be enjoined as a place for lewdness, assignation and prostitution; that defendant.....

.....be perpetually enjoined from further conducting or maintaining said nuisance, either directly or indirectly, by himself, agent, servant, employee or lessee; that defendant..... be perpetually enjoined from further permitting the use for said purposes of said premises and building thereon, or any part thereof, either directly or indirectly, by himself, agent, servant or lessee; and that all persons whomsoever be perpetually and permanently enjoined from using said premises for such unlawful purposes; that a temporary writ of injunction issue herein as by law provided, and that said injunction be made perpetual, and for such other and further relief as the facts and circumstances show the plaintiff entitled to under the provisions of the laws of Iowa, and for costs of suit.

.....
Attorneys for Plaintiff.

(Add usual verification.)

The form of decree may be patterned after the one suggested for enjoining liquor nuisances.

SEC. 4944-h3, Supplemental Supplement, 1915. **Action—when tried—reputation—dismissal—delay in trial.** “The action when brought shall be noticed for and triable at the first term of the court the same as other actions triable in the district court of such county, and in such action evidence of the general reputation of the place shall be competent for the purpose of proving the existence of said nuisance and shall be prima facie evidence of such nuisance and of knowledge thereof and of acquiescence and participation therein on the part of the owners, lessors, lessees, users and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form of property used in conducting or maintaining said nuisance. If the complaint is filed by a citizen or corporation, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the county attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the county attorney to prosecute said action to judgment at the expense of the county, and if the action is continued more than one term of court, any citizen of the county or the county attorney may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen or a corporation and the court finds there was no reasonable grounds or cause for said action, the costs may be taxed to such citizen or corporation.”

SEC. 4944-h4, Supplemental Supplement, 1915. **Violation of injunction—procedure to establish—penalty.** “In case of the violation of any injunction granted under the provisions of this act, or of a restraining order or the commission of any contempt of court in proceedings under this act, the court, or in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court a complaint under oath, setting out and alleging facts constituting such violation, upon which the court or judge shall cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this act shall be punished by a fine of not less than two hundred nor more than one thousand dollars or by imprisonment in the county jail not less than three nor more than six months or by both fine and imprisonment.”

SEC. 4944-h5, Supplemental Supplement, 1915. **Order of abatement—sale of property—building closed—contempt.** “If the existence of the nuisance be admitted or established in an action as provided in this act, or in a criminal proceeding in the district court, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, and shall direct the sale of such in the manner provided for the sale of chattels under execution, and shall direct the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released as hereinbefore provided. If any person shall break and enter or use a building, erection or place so directed to be closed he shall be punished as for contempt as provided in the preceding section. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property, on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.”

SEC. 4944-h6, Supplemental Supplement, 1915. **Duty of county attorney—proceeds of sale.** “In case the existence of such nuisance is established in a criminal proceeding in a court not having equitable jurisdiction, it shall be the duty of the county

attorney to proceed promptly under this act to enforce the provisions and penalties thereof, and the finding of the defendant guilty in such criminal proceedings, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. All moneys collected under this act shall be paid to the county treasurer. The proceeds of the sale of the personal property as provided in the preceding section, shall be applied in payment of the costs of the action and abatement or so much of such proceeds as may be necessary, except as thereafter provided."

SEC. 4944-h7, Supplemental Supplement, 1915. **Release of property on filing bond.** "If the owner of the premises in which said nuisance has been maintained appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the court in the full value of the property, to be ascertained by the court, or in vacation, by the judge thereof, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation the judge, if satisfied of his good faith, may order the premises closed or sought to be closed under the order of abatement, to be delivered to said owner, and said order of abatement cancelled so far as the same may relate to said real property. The release of the property under the provisions of this section shall not release it from the injunction herein provided against the property nor any of the defendants nor from any judgment, lien, penalty or liability to which it may be subject by law."

SEC. 4944-h8, Supplemental Supplement, 1915. **Assessment and distribution of tax.** "Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by this act, there shall be imposed upon said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of three hundred dollars (\$300.00). The imposing of said tax shall be made by the court as a part of the proceeding, and the clerk of said court shall make and certify a return of the imposition of said tax forthwith to the county auditor, who shall enter the same as a tax upon the property and against the persons upon which

or whom the lien was imposed as and when other taxes are entered, and the same shall be and remain a lien on the land upon which lien was imposed until fully paid; provided that any such lien imposed while the tax books are in the hands of the auditor shall be immediately entered therein. The payment of said tax shall not relieve the persons or property from any other penalties provided by law. The provisions of the law relating to the collection of the taxes in this state, the delinquency thereof and sale of property for taxes shall govern in the collection of the tax herein prescribed in so far as the same are applicable, and the said tax collected shall be applied in payment of any deficiency in the costs of the action and abatement on behalf of the state to the extent of such deficiency after the application thereto of the proceeds of the sale of personal property as hereinbefore provided, and the remainder of said tax together with the unexpended portion of the proceeds of the sale of personal property shall be distributed in the same manner as fines collected for the keeping of houses of ill fame, excepting that twenty per cent of the amount of the whole tax collected and of the whole proceeds of the sale of said personal property as provided in this act shall be paid by the treasurer to the attorney representing the state in the injunction action, at the time of final judgment."

SEC. 4944-h9, Supplemental Supplement, 1915. **Tax assessed against person served or appearing—service—unknown claimants—modification of order.** "When such nuisance has been found to exist under any proceeding in the district court or as in this act provided, and the owner or agent of such building or ground whereon the same has been found to exist, was not a party to such proceeding, nor appeared therein, the said tax of three hundred dollars shall, nevertheless, be imposed against the persons served or appearing and against the property as in this act set forth. The person in whose name the real estate affected by the action stands on the books of the county auditor for purposes of taxation shall be presumed to be the owner thereof, and in case of unknown persons having or claiming any ownership, right, title, or interest in property affected by the action, such may be made parties to the action by designating them in the summons and complaint as "all other persons unknown claiming any ownership, right, title, or interest in the property affected by the action" and service thereon may be had by pub-

lishing such summons in the manner prescribed in section thirty-five hundred forty, supplement to the code, 1913. Any person having or claiming such ownership, right, title or interest, and any owner or agent in behalf of himself and such owner may make, serve and file his answer therein within twenty days after such services and have trial of his rights in the premises by the court; and if said cause has already proceeded to trial or to findings and judgment, the court shall by order fix the time and place of such trial and shall modify, add to or confirm such findings and judgment as the case may require. Other parties to said action shall not be affected thereby."

SEC. 4944-h10, Supplemental Supplement, 1915. **Construction of statute.** "Should any provision or item of this act be held to be unconstitutional, such fact shall not be held to invalidate the other provisions and items thereof."

SEC. 4944-h11, Supplemental Supplement, 1915. **Conflicting acts repealed.** "All acts and parts of acts inconsistent herewith are repealed."

LAWS OF THE UNITED STATES RELATING TO INTOXICATING LIQUOR

One of the most difficult problems to solve in regard to the matter of intoxicating liquor has been with reference to transportation from one state to another, since the power of making rules or regulations relating to commerce between the several states lies within the exclusive jurisdiction of the Federal Government by virtue of Par. 3, Sec. 8, Art. I. of the Constitution of the United States.

^The Webb-Kenyon law enacted by Congress has for its purpose the prohibiting of all shipments of intoxicating liquor from one state to another if the liquor is to be received, possessed, sold, or in any manner used in violation of the laws of the state where the delivery is to be made. The text of the law is as follows:

THE WEBB-KENYON LAW.

(S. 4043, 62d Cong., 2d Session. March 1, 1913, 37 Stat. 699.)

AN ACT divesting intoxicating liquors of their inter-state character in certain cases.

"That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented,

or other intoxicating liquor of any kind, from one state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other state, territory or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such state, territory or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

In the Supreme Court of the United States, in the case of *Clark Distilling Company v. Western Maryland Railway Co.*, 242 U. S. 311, definitely settled the constitutionality as well as the broad scope of the Webb-Kenyon law. The plea of inter-state commerce is of no avail against the shipment of liquor into a state, intended by any person interested therein to be received, possessed, sold, or in any manner used in violation of any law of such state. The Supreme Court says, "that act did not simply forbid the introduction of liquor into a state for prohibited use, but took the protection of inter-state commerce away from all receipts and possession of liquor prohibited by the state law." Also that the law covered shipments for personal use.

The case of *Hamm Brewing Company v. C. R. I. & P. Ry. Co.*, decided April 10, 1917, by the Circuit Court of Appeals of the United States, held that the carrier had an interest both in the transportation and in the liquor itself as a bailee, it being vested with legal rights and subjected to obligations in respect to such liquor, and further that it had a lien upon such liquor for transportation charges. Thus even though there may be no prohibition against an individual using intoxicating liquor or possessing the same, yet if the law of the state where delivery is to be made prohibits the transportation of liquor, a carrier engaged in inter-state commerce cannot legally receive, transport or convey such intoxicating liquor.

PUBLIC—No. 380—64th CONGRESS. Reed "Bone-Dry" Law (extract from post office appropriation law). "Sec. 5. That no letter, postal card, circular, newspaper, pamphlet, or publication of any kind containing any advertisement of spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, or containing a solicitation of an order or orders for said liquors, or any of them, shall be deposited in or carried by the mails of the United States, or be delivered by any postmaster or letter

carrier, when addressed or directed to any person, firm, corporation, or association, or other addressee, at any place or point in any state or territory of the United States at which it is by the law in force in the state or territory at that time unlawful to advertise or solicit orders for such liquors, or any of them, respectively.

If the publisher of any newspaper or other publication or the agent of such publisher, or if any dealer in such liquors or his agent, shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent, anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than \$1,000 or imprisoned not more than six months or both; and for any subsequent offense shall be imprisoned not more than one year. Any person violating any provision of this section may be tried and punished, either in the district in which the unlawful matter or publication was mailed or to which it was carried by mail for delivery, according to direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any state or territory the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished as *provided*: Provided, that nothing herein shall authorize the shipment of liquor into any state contrary to the laws of such state: Provided further, that the postmaster general is hereby authorized and directed to make public from time to time in suitable bulletins or public notices the names of states in which it is unlawful to advertise or solicit orders for such liquors."

The foregoing law became effective July 1, 1917. Iowa is one of the states into which no liquor advertising matter can be forwarded through the United States mail.

This law further punishes "whoever shall order, purchase, or cause intoxicating liquors to be transported in inter-state commerce" except for the four specified purposes, namely:—scientific, sacramental, medicinal and mechanical purposes.

SEC. 12, H. R. 3545, 65th CONGRESS, 1st SESSION. **Sale of intoxicating liquor to officers or members of military**

forces of the United States, while in uniform, prohibited. “That the president of the United States, as commander in chief of the army, is authorized to make such regulations governing the prohibition of alcoholic liquors in or near military camps and to the officers and enlisted men of the army as he may from time to time deem necessary or advisable: Provided, that no person, corporation, partnership, or association shall sell, supply, or have in his or its possession any intoxicating or spirituous liquors at any military station, cantonment, camp, fort, post, officers’ or enlisted men’s club, which is being used at the time for military purposes under this act, but the secretary of war may make regulations permitting the sale and use of intoxicating liquors for medicinal purposes. It shall be unlawful to sell any intoxicating liquor, including beer, ale, or wine, to any officer or member of the military forces while in uniform, except as herein provided. Any person, corporation, partnership, or association violating the provisions of this section or the regulations made thereunder shall, unless otherwise punishable under the articles of war, be deemed guilty of a misdemeanor and be punished by a fine of not more than \$1,000 or imprisonment for not more than twelve months, or both.”

The foregoing is one section of the act authorizing the President to increase temporarily the military establishment of the United States.

SEC. 13, H. R. 3545, 65th CONGRESS, 1st SESSION. Suppression houses of ill fame near military camps. “That the secretary of war is hereby authorized, empowered, and directed during the present war to do everything by him deemed necessary to suppress and prevent the keeping or setting up of houses of ill-fame, brothels, or bawdy houses within such distance as he may deem needful of any military camp, station, fort, post, cantonment, training, or mobilization place, and any person, corporation, partnership, or association receiving or permitting to be received for immoral purposes any person into any place, structure, or building used for the purpose of lewdness, assignation, or prostitution within such distance of said places as may be designated, or shall permit any such person to remain for immoral purposes in any such place, structure, or building as aforesaid, or who shall violate any order, rule or regulation issued to carry out the object and purpose of this section, shall unless otherwise punishable under the articles of war, be deemed guilty of a misdemeanor and be punished by

a fine of not more than \$1,000, or imprisonment for not more than twelve months, or both.

(The four following sections have been taken from Chapter 9 of the United States Statutes of the Criminal Code relative to offenses against commerce.)

SEC. 238. Interstate shipment of intoxicating liquors; delivery of to be made only to bona fide consignee. "Any officer, agent, or employe of any railroad company, express company, or any other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instant of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other state, territory, or district of the United States or place noncontiguous to, but subject to the jurisdiction thereof, or from any foreign country into any state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both."

SEC. 239. Common carrier, etc., not to collect purchase price of interstate shipment of intoxicating liquors. "Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind, from one state, territory or district of the United States or place noncontiguous to, but subject to the jurisdiction thereof, into any other state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars."

This section does not apply to banks collecting drafts with bills of lading attached, where the shipment is made to a real consignee upon order sent by him and filled by shipment from the dealer's place of business. *First National Bank of Anamoose v. U. S.*, 206 Fed. 374, 124 C. C. A. 256, 46 L. R. A. (N. S.) 1139, reversing 190 Fed. 336; *Danciger v. Stone*, 188 Fed. 510. The law does not include banks, ordinary collectors and all other persons who are not members of the general class of carriers. *Idem.*

SEC. 240. Packages containing intoxicating liquors shipped under interstate commerce to be marked as such. "Whoever shall knowingly ship or cause to be shipped, from one state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, any package of or package containing any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and quantity contained therein, shall be fined not more than five thousand dollars; and such liquor shall be forfeited to the United States and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law."

• The word "consignee" as here used, means the person or corporation, whether owner, bailee, commission merchant, vendee, mere agent of the shipper, or the shipper himself, to whom the carrier may lawfully make delivery of the consigned goods. *U. S. v. Eighty-seven Barrels of Wine*, 180 Fed. 215.

A carrier is by virtue of this section apprised and put on notice as to the contents of the packages containing intoxicating liquor. *Southern Express Co. v. State*, 66 So. 115.

The offense denounced by this section may be prosecuted either in the district where the liquor is transferred to the carrier, or in the district where the carriage is completed. *U. S. v. Freeman*, 239 U. S. 117, 60 L. Ed., 36 Sup. Ct. Rep. 32.

Shipment of intoxicating liquor by mail absolutely prohibited. Sec. 217 of the Criminal Code of the United States relative to offenses against postal service declares that all spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind to be non-mailable, and the penalty for knowingly depositing or causing to be deposited in the United States mail any such non-mailable matter may be punished by a

fine of not more than one thousand dollars or imprisonment for not more than two years, or both. If such non-mailable matter is deposited with the design, intent, or purpose to kill, or in anywise hurt, harm or injure another, the penalty is by fine of not more than five thousand dollars, or imprisonment not more than ten years, or both.

Federal license stamps must be posted. Title XXXV, Chap. 3, Sec. 5988 of the Revised Statutes of the United States relating to internal revenue, provides that every person who has paid special tax to sell intoxicating liquor shall place and keep conspicuously exhibited in his place of business all stamps denoting payment of the special tax; if such person fails to comply with the above requirement he is liable to a penalty equal to the special tax that he has paid, and the costs of prosecution. Where the failure to comply with the provisions is wilful, the penalty is double the amount above mentioned.

Selling or furnishing liquor to Indians. Selling or furnishing intoxicating liquor to Indians has been made a criminal offense by an act of Congress. U. S. Rev. St. (1878), Sec. 2139. 27 U. S. St. at L. 260, 29 U. S. St. at L. 506. Every Indian under the charge of a superintendent or agent, wherever he may be; and all Indians, including mixed bloods, over whom the government exercises guardianship is considered an Indian. 22 Cyc. 145. Under an indictment for selling liquor to an Indian it is not necessary to prove criminal intent. 105 Fed. 944. And a claim that the defendant did not know the person to whom he sold was an Indian is no defense. 76 Pac. 611.

LAWS OF IOWA RELATING TO CIGARETTES

SEC. 5005 of the code. **Sale or gift of tobacco to minors.** "No person shall directly or indirectly, by himself or agent, sell, barter or give to any minor under sixteen years of age any cigar or tobacco in any form whatever, except upon the written order of his parent or guardian. Any violation of this section shall be punished by a fine of not less than five nor more than one hundred dollars, and the offender shall stand committed until fine and costs of prosecution are paid."

SEC. 5006 of the code. **Sale of cigarettes.** "No one, by himself, clerk, servant, employe or agent, shall, for himself or any person else, directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in the consideration of the purchase of any property, of any services, or in evasion hereof, or keep for sale, any cigarettes or cig-

arette paper or cigarette wrappers, or any paper made or prepared for the purpose of making cigarettes, or for the purpose of being filled with tobacco for smoking; or own or keep, or be in any way concerned, engaged or employed in owning or keeping, any such cigarettes or cigarette paper or wrappers, with intent to violate any provision of this section; or authorize or permit the same to be done. Whoever is found guilty of violating any of the provisions of this section, for the first offense shall pay a fine of not less than twenty-five dollars nor more than fifty dollars and costs of prosecution, and stand committed to the county jail until such fine and costs are paid; for the second and each subsequent offense, he shall pay, upon conviction thereof, a fine of not less than one hundred dollars nor more than five hundred dollars and the costs of prosecution, or be imprisoned in the county jail not to exceed six months: provided that the provisions hereof shall not apply to the sales of jobbers doing an interstate business with customers outside the state."

A cigarette is defined as "a small cigar made of finely cut tobacco rolled up in an envelope of tobacco, corn-husk, or thin paper, generally rice paper, so as to form a cylinder open at both ends." 7 Cyc. 130 A cigarette may have a wrapper of tobacco. *Com. v. Feldser*, 25 Pa. Co. 243. See also 11 Corpus Juris, 765 under "Cigarettes."

But the federal government has made a different definition of a cigarette by act of July 24, 1897-c11, Sec. 10, of the revised statutes of the United States. This provided that "all rolls of tobacco, or any substitute therefor, wrapped with tobacco, shall be classed as cigars, and all rolls of tobacco or any substitute therefor wrapped in paper or any substitute other than tobacco, shall be classed as cigarettes." Under this ruling the so-called "all tobacco cigarettes" are now designated as cigars.

The provisions of Sec. 5006 of the Code relative to the sale of cigarettes within the state are void in so far as they apply to the sale of cigarettes imported into this state and sold in the original packages. *McGregor v. Cone*, 104 Iowa 465; 73 N. W. 1041.

Since the "original package" is protected, the question then arises what is an "original package?" The late Justice Deemer said in *McGregor v. Cone*, supra, "The definition commonly accepted, and believed by us to be correct, is that it is a bundle put up for transportation or commercial handling, and usually consists of a number of things bound together, convenient for handling and conveyance. See *State v. Board of Assessors*, 46 La. 146 (15 South. Rep. 10); *Keith v. State of Ala.*, 2 (8 South. Rep. 353); *U. S. v. One Hundred and Thirty-two Packages*, 22 C. C. A. 228 (76 Fed. Rep. 364). In the case of *State v. Winters*, 44 Kan. Sup. 723 (25 Pac. Rep. 237), it is said: 'The original package was and is the package as it existed at the time of its

transportation from one state to another,' It is quite apparent, we think, that the words "original package" have reference to the unit which the carrier receives, transports, and delivers as an article of commerce. The importer decides for himself the size of the package which he desires to import, and when he delivers it to the carrier for transportation he gives it the initial step, and from that time until sold in that form or broken, and transformed, it is the subject of interstate commerce. But when sold or broken, or when it changes form, it ceases to be an article of interstate commerce, and no longer enjoys this protection. The original package, then, is that package which is delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped. If sold, it must be in the form as shipped or received; for, if the package be broken after such delivery, it, by that act alone, becomes a part of the common mass of property within the state, and is subject to the laws of that state enacted in virtue of its police power."

This rule was approved in the case of *Austin v. State of Tennessee*, 101 Tenn. 563; 50 L. R. A. 478; 70 Am. St. Rep. 703; 48 S. W. 305 and goes even a step farther than the Iowa court has ever held in stating that cigarettes are not legitimate articles of commerce.

The definition of an original package given by the Iowa Supreme Court is further supported in the case in *Re Agnew*, 89 Neb. 306; 35 L. R. A. (ns) 836, 131 N. W. 817; Ann. Cas. 1912C, 676.

In view of the foregoing decisions the shipping of cigarettes in packages and boxes without lids or covers over them will not make each small package an original package within the meaning of the law as this is not the usual or customary form in which a shipper delivers his goods to the carrier for transportation. See *Austin v. State of Tennessee*, *supra*. See also *Cook v. Marshall County*, 119 Iowa 384; 93 N. W. 372, affirmed 196 U. S. 261.

SEC. 5007 of the code. **Tax on sale.** "There shall be assessed a tax of three hundred dollars per annum against every person, partnership or corporation, and upon the real property, and the owner thereof, within or whereon any cigarettes, cigarette paper or cigarette wrapper, or any paper made or prepared for use in making cigarettes or for the purpose of being filled with tobacco for smoking, are sold or given away, or kept with intent to be sold, bartered or given away, under any pretext whatever. Such tax shall be in addition to all other taxes and penalties, shall be assessed, collected and distributed in the same manner as the mullet liquor tax, and shall be a perpetual lien upon all property both personal and real used in connection with the business; and the payment of such tax shall not be a bar to prosecution under any law prohibiting the manufacturing of cigarettes or cigarette paper, or selling, bartering or giving away the same.

But the provisions of this section shall not apply to the sales by jobbers and wholesalers in doing an interstate business with customers outside the state."

The payment of the cigarette mulct tax does not constitute a bar to prosecution under Sec. 5006, of the Code, which absolutely prohibits the sale of cigarettes. *Hodge v. Muscatine County*, 121 Iowa 482; 96 N. W. 968.

In addition to what appears in the foregoing sections relative to the sale of cigarettes it should be noted that Chap. 136 of the 37th G. A. prohibits the advertising of intoxicating liquors, "or any other article, the sale or keeping for sale of which is prohibited by the laws of this state." And the law further provides that any building, erection or place which is used for the purpose of printing any advertising matter for intoxicating liquors or "any other article the sale or keeping for sale of which is prohibited by the laws of this state," shall be deemed a public nuisance and be enjoined and abated in the same manner that liquor nuisances are enjoined and abated. This statute became effective July 4, 1917. It is set out at length on page 58 hereof.

The following form may be used for the return of the cigarette mulct tax by citizens. The form given under the head of intoxicating liquor mulct tax for the use of the assessor may also be followed by that officer as a guide in returning persons and property subject to the cigarette mulct tax.

FORM.

Citizens' Return of Cigarette Mulct Tax.

STATE OF IOWA,

.....County. } ss.

To the Auditor of.....County:

We,, and....., on oath state that we are citizens of the aforesaid county and state, and that we are credibly informed and believe that the owners, occupants and tenants of the following described premises, to-wit:..... (describe as accurately as possible)in the county of....., state of Iowa, are engaged in carrying on the business of selling and dispensing cigarettes, cigarette papers and cigarette wrappers contrary to the laws of Iowa, and maintaining a place where cigarettes, cigarette papers and cigarette wrappers are sold, kept for sale and dispensed contrary to the laws of Iowa; and that said persons have been so engaged on said premises since the.....day of....., 19.....

That.....and.....are the owner and agent, respectively, of the premises above described; that.....and.....are the occupants and tenants thereof.

That said persons and property should be returned as subject to the cigarette mulct tax; that the assessor of said district has failed to so return said persons and property.

We further state that we have served, or caused said persons to be served with notice of intention to return said persons and property for the cigarette mulct tax as provided by law, as shown by the return of service hereto attached and made a part hereof.

Wherefore these affiants demand that said persons and property be assessed for the cigarette mulct tax as required by law for the quarter beginning on the.....day of..... 19....

.....

Affiants.

Subscribed and sworn to by the above named affiants in my presence this.....day of....., 19....

.....
 Notary Public in and for said County.

The form of notice of an intention to return for the cigarette mulct tax may be in substantially the same form as that used for the notice of the intoxicating liquor mulct tax.

SEC. 5007-a, Supplement, 1913. Cigarettes and cigarette papers—search warrant—seizure—destruction. “If any reputable citizen of the county make oath before a magistrate, that he has probable cause to suspect, and does suspect, that any house, place or building, naming the house, building or place, as nearly as may be, and the occupant, is unlawfully used as a place in which to receive, keep, store, sell or give away cigarettes, cigarette papers or cigarette wrappers, or any paper made or prepared for the purpose of making cigarettes, or for the purpose of being filled with tobacco for smoking; or that the occupant is in any way concerned, engaged or employed in owning or keeping any such cigarettes or cigarette papers or wrappers, with intent to violate the law, or authorize or permit the same to be done, such magistrate shall issue his warrant particularly describing the place to be searched and the person or persons to be apprehended or things to be seized directed to any peace officer in the county, for the purpose of searching such house, building or place and for the seizure of such cigarettes, cigarette papers or cigarette wrappers, or any paper made for the purpose of making cigarettes, and for the apprehension of the occupant or keeper thereof; and the said cigarettes or cigarette papers and the keeper shall be brought before such magistrate to be dealt with as provided by law. All such cigarettes or cigarette papers, so seized, and unlawfully kept, shall be destroyed and an entry thereof shall be made upon his docket. The discovery of cigarettes or cigarette papers in any public place shall be prima-

facie evidence of the keeper's intent to unlawfully sell or give the same as prohibited in section five thousand and six of the code."

One important matter to be observed relative to the issuance of a search warrant is that it may be issued by a "magistrate". A magistrate is defined by Sec. 5097, of the Code, so as to include "any judge of the supreme, district or superior court, throughout the state, and justices of the peace, mayors of cities and towns, judges of police or other city courts, and police and other special justices in cities and towns, within their respective counties.

A liquor search warrant can only be issued by the judge of a district or superior court or by a justice of the peace. See Sec. 2413, Supplemental Supplement, 1915, as amended by 37th G. A., Chapt. 322. A judge of the municipal court has jurisdiction to issue a search warrant for liquor in view of the provision of Sec. 694-c18, Supplemental Supplement, 1915.

The forms given may be used as a guide for preparing warrants for the seizure of cigarettes.

FORM.

Information for Search Warrant for Cigarettes.

State of Iowa, ex rel., (Name of person making affidavit.) Plaintiff,	In the Justice Court of Iowa, in and for.....Township andCounty.
vs. and certain Cigarettes, Cigarette Pa- pers, and Cigarette Wrappers, Defendant.	
	Before (name of Judge or Just- ice) Court.

Comes now, who being duly sworn, on oath states that he is a citizen of said county, that he has good reason to believe and does believe that certain cigarettes, cigarette papers and cigarette wrappers are in said county, in the state of Iowa, in the building (and dependencies thereto and cellar thereunder) described as follows, to-wit:

(Describe accurately.)

And that said cigarettes, cigarette papers and cigarette wrappers are owned and kept by the above named defendant and is intended by him to be sold, dispensed or given away in violation of the laws of the state of Iowa, both in the day time and night time.

Relator.

Subscribed and sworn to before me this.....day of.....,
A. D. 191.....

(Title) of the aforesaid Court.

FORM.

Search Warrant for Cigarettes.

State of Iowa, ex rel., (Name person who made affidavit.)	} In the Justice Court of Iowa, in and for.....Township and County. Before (name of Judge or Just- ice) Court.
Plaintiff.	
vs.	
..... and certain Cigarettes, Cigarette Pa- pers and Cigarette Wrappers, Defendant.	

To any Peace Officer of.....County, Iowa:

Information on oath having been duly filed before me, by a reputable citizen of said county, charging that certain cigarettes, cigarette papers and cigarette wrappers, are in said county, in the state of Iowa, in the building (and dependencies thereto and cellar thereunder) described as follows, to-wit:

(Describe as accurately as possible.)

And that said cigarettes, cigarette papers and cigarette wrappers are owned and kept by said defendant...with intent by.....to sell, dispense or give away the same contrary to law. You are, therefore, commanded in the day time (or at any time of day or night) to thoroughly search the premises above described, and if you find any of the said cigarettes, cigarette papers or cigarette wrappers thereon, to seize the same and to keep the same securely until final action thereon. And you will forthwith serve this writ and return the same to this court with your return endorsed thereon.

Given under my hand this.....day of.....
A. D. 191.....

.....
(Title) of the aforesaid Court.

FORM.

Notice of Cigarette Seizure.

To (Defendant) and all Others to Whom it May Concern:

Notice is hereby given to you that on the.....day of.....A. D., 19...., a search warrant was issued from the court of the undersigned against certain cigarettes alleged to be kept for sale or gift in violation of law, by (defendant) in the building (and dependencies thereto and cellar thereunder) described as follows, to-wit: (Describe as accurately as possible.)

That under and by virtue of said warrant a search of said premises were made on the.....day of.....A. D., 19...., and certain cigarettes with the boxes in which the same were contained, to-wit: (describe as accurately as possible) were found, and the same seized by the officers executing said warrant.

Now, therefore you, and each of you, are hereby summoned to appear before the undersigned at his office in.....county,

Iowa, on the.....day of.....A. D., 19....,
at.....o'clock.....

.....
Justice of the Peace in and for
.....townshipcounty
and state of Iowa.

The officer serving this notice should make his return thereon.

FORM.

Order to Destroy Cigarettes, Cigarette Papers and Cigarette Wrappers.

In.....Court,County, Iowa.

State of Iowa, ex rel.,

vs.

.....
.....
and certain Cigarettes, Cigarette Pa- } Docket....., Page.....
pers, and Cigarette Wrappers. }

To.....of said County:

You are hereby notified that the cigarettes, cigarette papers and cigarette wrappers now in your custody, to-wit: (Describe accurately.) formerly seized by you under and by virtue of a search warrant issued in the above entitled cause, have been adjudged forfeited, after due trial as provided by law.

Now, therefore, you are directed forthwith to effectually destroy said cigarettes, cigarette papers and cigarette wrappers, and immediately thereafter to make return of this order to my court, with your doings endorsed thereon and sworn to.

.....
(Judge or Justice.)
of the aforesaid court.

Dated this.....day of....., 19....,

The officer serving this notice should make his return thereon and include all items of cost incurred in the destruction of the cigarettes.

SEC. 5007-b, Supplement, 1913. **Tax assessed—notice.** “The magistrate who shall try said cause and then issue an order condemning and destroying any cigarettes or cigarette papers as provided in the preceding section, shall certify a copy of the record of such proceedings to the treasurer of the county within ten days after the order to destroy such cigarettes or cigarette papers is issued and a tax assessment of three hundred dollars against the property in or upon which the cigarettes or cigarette papers or cigarette wrappers were unlawfully kept or sold, provided for in section five thousand and seven of the code, and collect the same as therein provided. Within thirty days after the receipt of the magistrate’s certificate, the county treasurer shall notify the keeper of such house, building or place, and the owner thereof of such assessment.”

SEC. 5007-c, Supplement, 1913. **Use by minors prohibited.** "It shall be unlawful for any person under the age of twenty-one years to smoke or use a cigarette or cigarettes on the premises of another, or on any public road, street, alley or park or other lands used for public purposes or in any public place of business or amusement, except when in company of his parent or guardian."

SEC. 5007-d, Supplement, 1913. **Violation—penalty—suspension of sentence.** "Any person found guilty of violating the provisions of section one (sec. 5007-c, supplement, 1913) hereof shall be punished by a fine of not to exceed ten dollars, or imprisonment in the county jail not to exceed three days, for each offense; provided, if said minor person shall give information which may lead to the arrest of the person or persons violating any of the provisions of section five thousand and six of the code, and shall give evidence as a witness in the proceedings which may be instituted against said party or parties, the court shall have power to suspend sentence against said minor person."

DUTIES OF OFFICERS—IN GENERAL

DUTIES OF ATTORNEY GENERAL.

For law defining powers and duties of the attorney general see Title III. Chapter 3, Section 208-a, Supplement, 1913.

Said section 208-a provides in part as follows:

SEC. 208-a. It shall be the duty of the attorney general:

To appear for the state, prosecute and defend all causes in the supreme court in which the state is a party or interested.

When requested to do so by the governor, executive council, or general assembly, or when in his judgment the interests of the state require it, he shall appear for the state before any other court or tribunal, prosecute or defend all actions and proceedings, civil or criminal, in which the state may be a party or interested. *Cosson vs. Bradshaw*, 141 NW. 1062; 160 Iowa 296.

To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to

time require of them reports as to the condition of public business entrusted to their charge.

Additional power was granted to the attorney general in the matter of law enforcement by the passage of an act by the 37th G. A., Chap. 231, whereby the attorney general was given authority to call to his aid any peace officer in the state for the purpose of rendering assistance, procuring evidence, ferreting out crime, prosecuting law violators, or otherwise enforcing the law. The above act is set forth at length in this compilation and appears on pages 92 and 93 hereof.

DUTIES OF COUNTY ATTORNEY.

For law defining duties of the county attorney see Title III, Chapter 9, of the code, as amended.

Section 301, Supplemental Supplement, 1915, as amended by 37th G. A. Chapt. 58, provides in part as follows:

SEC. 301. It shall be the duty of the county attorney:

To diligently enforce, or cause to be enforced in his county, all of the laws of the state, actions for a violation of which may be commenced or prosecuted in the name of the state of Iowa, or by him as county attorney, except such laws, the enforcement of which is exclusively enjoined upon others by statute.

To appear for the state and county in all cases and proceedings in the courts of his county, to which the state or county is a party, except cases brought on change of venue from another county; and in the supreme court in all cases in which the county is a party; and also in all cases transferred on change of venue to another county in which his county or the state is a party.

To appear and prosecute all preliminary hearings before justices of the peace upon charges triable upon indictment.

To appear and prosecute misdemeanors before justices of the peace whenever he is not otherwise engaged in the performance of official duties.

To give advice or his opinion in writing without compensation, to the board of supervisors and other county officers when requested so to do by such board or officer, upon all matters in which the state or county is interested, or relating to the duty of the board or officer in which the state or county may have an interest; but he shall not appear before the board of supervisors upon any hearing in which the state or county is not interested. *Bevington v. Woodbury County*, 107 Iowa 424; 78 N. W. 222; also *Yockey v. Woodbury County*, 130 Iowa 412; 106 N. W. 950.

To attend the grand jury whenever necessary for the purpose of examining witnesses before it, or of giving it legal advice, or to procure subpoenas or other process for witnesses, to prepare all bills of indictment; but he must not be present when an indictment is considered or found.

To make reports relating to the duties and the administration of his office to the governor or the attorney general whenever called upon by the governor or the attorney general so to do.

Sec. 2446 of the Code makes it the duty of the county attorney of each county to see that the provisions of the chapter relating to the mulct tax are enforced, and the district court or any judge thereof has power to suspend or remove from office any county attorney who willfully refuses or neglects to perform such duty. Such suspension or removal may be made upon the application of any citizen of the county after due notice to such officer and trial in court.

Sec. 65-b, Supplemental Supplement, 1915, makes it the duty of every county attorney to assist any special state agent in the performance of his duties.

Sec. 4944-h6, Supplemental Supplement, 1915, makes it the duty of the county attorney to enforce the provisions and penalties of the red light injunction law where the existence of such a nuisance is established in a criminal proceeding in a court not having equitable jurisdiction.

Sec. 2389, of the Code, makes it the duty of the county attorney to appear and resist the application of each person seeking a permit to sell intoxicating liquor.

Sec. 2427-a. Supplement, 1913, makes it the duty of the several county attorneys of the state to secure from the federal internal revenue collectors for Iowa on or before the 15th day of January, April, July, October of each year, a certified copy of the names of all persons who have paid to the federal government the special taxes imposed upon the business of selling intoxicating liquors within their respective counties, except registered pharmacists holding permits. After receiving this certified list the county attorney is required to file the same for record with the county auditor.

Sec. 2406, Supplement, 1913, provides that where an action to enjoin a nuisance has been brought by a citizen that it shall not be dismissed upon the motion of either the plaintiff or defendant until the county attorney shall have made a personal investigation of all the matters set forth in the motion for dismissal and has filed a written report of his findings and his recommendation in reference to the disposition of the case. In event such action remains upon the docket for two terms of court, without trial, it shall be the duty of the county attorney to conduct an examination of the plaintiff or his attorney as to the reasons why such cause has not been brought on for trial, if the judge shall so order.

Sec. 4944-h3, Supplemental Supplement, 1915, provides that in case a private citizen fails to prosecute any action to enjoin a nuisance under the red light injunction law that the county attorney, when ordered to do so by the court, shall prosecute such action.

DUTIES OF SHERIFF.

For law defining duties of the sheriff see Title IV, Chapter 6, of the code as amended.

Sections 499, 499-a and 499-c, Supplement, 1913, provide in part as follows:

SEC. 499. It shall be the duty of the sheriff, by himself, or deputy, to preserve the peace in his country, *to ferret out crime*, to apprehend and arrest all criminals, and in so far as it is within his power, to secure evidence of all crimes committed in his county, and present the same to the county attorney and the grand jury; to file informations against all persons who he knows, or has reason to believe, have violated the laws of the state, and to perform all other duties pertaining to the office of sheriff, or enjoined upon him by law.

SEC. 499-a. The sheriff, by himself or deputy, may call any person to his aid to keep the peace or prevent crime, or to arrest any person liable thereto, or to execute process of law; and when necessary, the sheriff may summon the power of the county.

SEC. 499-c. The sheriff shall, whenever directed so to do in writing by the county attorney, make special investigation of any alleged infraction of the law within his county, and report with reference thereto within a reasonable time to such county attorney.

Sec. 65-b, Supplemental Supplement, 1915, makes it the duty of any sheriff to assist any special agent of the state in the performance of his duties.

The 37th G. A., Chap. 231, provides that the governor or attorney general may call to their aid any peace officer in the state for the purpose of procuring evidence, etc., and to assist in the enforcement of the law.

Sec. 2435, Supplemental Supplement, 1915, provides that upon a request of three citizens the sheriff of any county may be required to serve notice of intention to assess a mulct tax against any person or property and make return thereof and file the same with the county auditor.

Sec. 2411, of the Code, provides that in an action brought by a citizen to enjoin a liquor nuisance no officer is entitled to demand his fee in advance.

DUTIES OF MAYOR.

For law defining the duties of mayors of cities and towns see Title V, Chapter 2, of the Code, as amended.

Section 658 Supplement, 1913, provides in part as follows:

He (the mayor) shall be a conservator of the peace, and, within the limits of the same, shall have all the powers conferred upon sheriffs to suppress disorders. He shall be the chief executive officer thereof, and it shall be his duty to enforce all regulations and ordinances; he may, upon view, arrest any one guilty of a violation thereof *or of any crime under the laws of the state*, and shall, upon information supported by affidavit, issue process for the arrest of any person charged with violating any ordinance of the city.

DUTIES OF PEACE OFFICERS.

Sec. 5099, of the Code, states that "the following persons, respectively, are designated in this code under the general term 'peace officer':

1. Sheriffs and their deputies;
2. Constables;
3. Marshals and policemen of cities and towns."

In view of Sec. 694-c9, Supplemental Supplement, 1915, the bailiff of a municipal court would doubtless be considered a peace officer as the statute authorizes him to perform all acts similar to those incumbent upon constables and sheriffs.

Since a deputy city marshal is not a peace officer it is doubtful whether a deputy bailiff of a municipal court would be considered a peace officer. *Twinam v. Lucas County*, 104 Iowa, 231; 73 N. W. 473.

In addition to the foregoing a peace officer may be called upon by either the attorney general or the governor to assist in the matter of procuring evidence and enforcing the laws in any part of the state of Iowa. Such peace officers when so called shall have the same powers in any part of the state as the sheriff of the county in which such peace officer is acting. 37th G. A., Chap. 231.

Also any special agent of the state may call to his assistance any sheriff, marshal, constable, police officer or other peace officer. Sec. 65-b, Supplemental Supplement, 1915.

Peace officers are entitled to inspect the liquor record book in the office of any common carrier during business hours. Sec. 2421-d, Supplemental Supplement, 1915.

Any peace officer of a county under a process or warrant to him directed shall have the right to open any box, barrel or other vessel or packages for examination, if he has reasonable ground for believing that it contains intoxicating liquor, either before or while the same is being transported or conveyed. Sec. 2420 of the Code.

**DUTY OF PEACE OFFICERS TO ENFORCE LIQUOR LAWS—
PENALTY FOR FAILURE TO ACT.**

SEC. 2428, Supplement, 1913. "Peace officers shall see that all provisions of this chapter (relating to intoxicating liquors) are faithfully executed within their respective jurisdictions, and when informed, or they have reason to believe, that the law has been violated, and that proof thereof can be had, they shall file an information to that effect against the offending party before a magistrate, who shall thereupon proceed according to law. Upon trials of such causes, the county attorney shall appear for the state, unless some other attorney, selected by the peace officer who filed the information, shall have previously appeared. Any peace officer failing to comply with the provisions of this section shall pay a fine of not less than ten nor more than fifty dollars, and a conviction shall work a forfeiture of his office. Every peace officer shall give evidence, when called upon, of any facts within his knowledge tending to prove a violation of the provisions of this chapter, but his evidence shall in no case be used against him in any criminal prosecution. The attorney selected by a peace officer in accordance with the provisions of this section shall receive, for prosecuting such charge before a justice of the peace, five dollars, to be taxed as costs in the case. Any peace officer shall, whenever directed in writing so to do by the county attorney, make special investigation of any alleged or supposed infraction of the law within his county, and report in writing with reference thereto within a reasonable time to such county attorney. When such investigation is made, the peace officer shall file with the county auditor a detailed, sworn statement of the services rendered and of his actual itemized expenses incurred in connection therewith, accompanied by the written order of the county attorney. If the officer be one who is receiving a definite and fixed salary, the board of supervisors shall audit and allow only so much of such expense account as it shall find reasonable and necessary. If the officer be one not receiving a fixed and definite salary, the board of supervisors shall allow such additional sum for services as it may deem reasonable and just, which allowance shall be final."

REMOVAL OF OFFICERS

Chap. 8 of Title 6, of the Code, relates to the removal of persons from office for certain specified causes. The law as it appears in the Code provides for a trial as in a law action.

The 33d G. A. made certain additions to the law which are set forth in the Supplement, 1913, under Sec. 1258-a, et seq; and it further provided that the proceedings should be summary in its nature and triable as an equitable action. One of the objections to the law was that it did not include a large number of public officers.

The 37th G. A., Chap. 391, amended the law by striking out the following: "any county attorney, any member of the board of supervisors, sheriff, mayor, police officer, marshal or constable" and inserting in lieu thereof: "all elective county, city and town officers."

The law became effective July 4, 1917, and is as follows: "All elective county, city and town officers shall be removed from office by the district court or judge upon charges made in writing and hearing thereof for the following causes:

1. For wilful or habitual neglect or refusal to perform the duties of his office.
2. For wilful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication or upon conviction of being intoxicated."

Sec. 1258-d. Supplement, 1913. The complaint or petition shall be entitled in the name of the state of Iowa, and may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, the county attorney of such county, or the attorney general, and shall be filed by the attorney general when directed so to do by the governor. It shall be the duty of the county attorney to appear and prosecute this proceeding when the officer sought to be removed is one other than himself; and when the proceeding is brought to remove the county attorney, the court may appoint an attorney to appear in behalf of the state and prosecute such proceedings.

For cases arising under this statute see *State v. Henderson*, 145 Ia., 657; *State v. Hospers*, 147 Ia., 712; *State v. Baughn*, 162 Ia., 308.

By virtue of Sec. 1258, Supplemental Supplement, 1915, cities and towns were given additional power in the matter of removing any officer for any of the causes provided for by statute. But proceedings thereunder will not bar a proceeding in the district court as provided for under the removal law above set forth.

SECTIONAL INDEX

The following sections of the statutes of Iowa and of the United States are set forth at length in this compilation.

Code—Code of 1897.

S. —Supplement, 1913.

S. S.—Supplemental Supplement, 1915.

Sec. No.	Volume	Page of this Volume	Sec. No.	Volume	Page of this Volume
27 of Art. I of the Constitu- tion of Iowa (pro- posed)		4	2401-b	S.	39
65-a	S. S.	91	2401-c	S.	39
65-b	S. S.	92	2401-d	S. substitute for.....	40
65-c	S. S.	92	2401-e	S.	41
65-d	S. S.	92	2401-f	S.	41
208-a	S, as amended.....	92-93	2402	Code	53
704	S, substitute for.....	63	2403	S.	55
2382	S, S, as amended.....	6	2403-a	S.	55
2383	S.	7	2404	Code	56
2383-a	S.	20	2405	S. S.	8
2383-b	S.	20	2406	S.	12
2383-c	S.	20	2407	Code	13
2383-d	S.	20	2408	Code	16
2384	Code	8	2409	Code	19
2385	Code	26	2410	S.	18
2386	S.	29	2411	Code	61
2387	Code	21	2412	Code	19
2388	S.	21	2413	S. S. as amended.....	41
2389	Code	22	2414	Code	43
2390	S.	23	2415	S. S. as amended.....	44
2391	Code	23	2416	Code	48
2392	S.	24	2417	Code	56
2393	S.	26	2418	Code	56
2394	S.	27	2419	Code	64
2395	Code	29	2420	Code	66
2396	Code	66	2421	Code	67
2397	Code	32	2421-a	S. S.	67
2398	Code	30	2421-b	S. S.	68
2399	Code	31	2421-c	S. S.	68
2400	S.	33	2421-d	S. S.	69
2401	S.	32	2421-e	S. S.	69
2401-a	S. as amended.....	38	2422	Code	55
			2423	Code	57
			2423-a	S. S.	58

TOPICAL INDEX

	Page		Page
A		Seizure under search war-	
ABATEMENT OF NUISANCES—		rant—destruction of112	
See Nuisance.		Assessment of mulct tax—	
ADVERTISING OF CIGARETTES—		notice115	
Prohibited—penalty 58		Use of, by minors prohibited 116	
ADVERTISING OF LIQUOR—		Penalty for use of, by minor 116	
Prohibited in Iowa..... 58		CITIES—	
Barred from U. S. mail....103		Additional powers granted to 63	
AMENDMENT TO CONSTITUTION—		COLLECTION—	
Proposed form of..... 4		Of certain liquor bills pro-	
ARREST—		hibited57-58	
How made—by whom..... 80		By interstate carrier of pur-	
Information for, etc..... 81		chase price—prohibited...106	
ATTORNEY FEES—		CONSIGNEE—CONSIGNOR—	
For enjoining nuisance..... 12		Defined 68	
In contempt proceedings... 13		CONSTITUTIONAL AMENDMENT—	
Of attorney in Red Light In-		Prohibitory amendment 4	
junction suits100-101		Date of special election..... 4	
ATTORNEY GENERAL—		CONTEMPT—	
Duties of116		What constitutes..... 8	
Authorized to call on peace		CORPORATION—	
officers for aid.....92-93		Defined 41	
B		COSTS—	
BILLS OF LADING—		Taxation of, nuisances..8-16-19	
Penalty for issuing false.. 67		COUNTY ATTORNEY—	
"BONE-DRY" LAW (REED)—		Must investigate failure of	
See United States Statutes.		private citizen to prosecute	
BOOTLEGGER—		nuisance actions 12	
Defined 60		Duty to enforce mulct tax.. 80	
Enjoining of, penalty..... 60		Duty to enforce Red Light	
C		Law 99	
CARRIER—		Duties of, in general.....117	
See Transportation.		Fees in Red Light Injunc-	
CIGARETTES—		tion suit100-101	
Defined109		Duty to secure list of holders	
Sale or gift of tobacco to		of federal license..... 47	
minors prohibited.....108		CRIMINAL PROCEDURE—	
Sale or gift of, prohibited—		(See also "Cigarette")	
penalty108		Arrest—how made 80	
"Original package" defined.109		Preliminary information.... 81	
Tax on sale110		Warrant for arrest..... 82	
		Subpoena 85	
		Magistrate's return of pre-	
		liminary examination..... 86	

	Page		Page
Criminal Procedure—Con.		On application to remit	
Binding over of defendant to		mulet tax	77
grand jury, etc.....	86	Red Light Nuisance.....	98
binding over of witnesses	87-88	Violation of cigarette law..	112
Docket entry	89		
		F	
D		FEDERAL LICENSE—	
DECREE—		Prima facie evidence of il-	
Relief asked—how drawn... 17		legal selling	47
DEFINITION OF TERMS—		County attorney to secure	
Bootlegger	60	list of holders—where	
Cigarette	109	filed	47-48
Consignee (U. S.).....	107	Holder of must keep same	
Consignee-consignor (Iowa) 68		posted	108
Contempt	8		
Corporation	41	FORMS—	
Dispense	7	Pench warrant	52
Intoxication	54	Bond for recognizance.....	83
Intoxicating liquor	6	Bond for appearance to dis-	
Nuisance—liquor	8	trict court	87
Nuisance—Red Light.....	94	Bond of witness guarantying	
Original package	109	appearance	88
Peace Officer	120	Decree to enjoin liquor nuis-	
Persistent violator	61	ance	17
Successful action	13	Docket entry on preliminary	
DELIVERY—		examination	89
Place of, deemed place of sale 6		Indictment—"bootlegging"—	
DENTISTS—		"nuisance"	50
How they may obtain liquor 38		Information	81
DISPENSE—		Information for cigarette	
Defined	7	search warrant.....	113
DUTIES OF OFFICERS—IN GENERAL—		Magistrate's Return on	
Attorney General	116	preliminary examination..	86
County attorney	117	Mulet tax list—liquor—	
Sheriff	119	cigarettes—assessor	71
Mayor	120	Mulet tax list—liquor—citi-	
Peace Officers	120	zens	74
		Mulet tax list—cigarettes—	
E		citizens	111
EVASION—		Notice of intention to return	
Statutes to be construed so		for mulet tax.....	72
as to prevent.....	63	Notice of liquor seizure.....	46
EVIDENCE OF—		Notice of cigarette seizure..	114
Illegal sale by permit holder 31		Order for destruction of	
Possessor of federal license..	47	cigarettes	115
Testimony of purchaser.....	50	Order for destruction of	
Unlawful use of property... 12		liquor	49
Former conviction	62		

Page	Page
Forms—Con.	Of Bootlegger 60
Order fixing date of hearing on temporary injunction.. 11	Forms of relief plaintiff may ask 9
Order for discharge of de- fendant 91	INTOXICATION—
Original notice—red light injunctions 96	Defined 54
Original notice—liquor in- junction 11	Punishment 53
Permit—retail 25	Who liable for care of per- sons intoxicated 56
Petition to cite for contempt 14	Who may recover damages.. 56
Petition to enjoin liquor nuisance 10	INTOXICATING LIQUOR—
Petition to enjoin red light nuisance 97	See Permits.
Search warrant, information for liquor 42	See Search Warrant.
Search warrant, information for cigarettes 113	Defined 6
Search warrant—liquor.... 44	Constitutional amendment.. 4
Search warrant—cigarettes 114	Manufacture, sale or keeping for sale of, prohibited.... 6
Subpoena 85	What sales permitted—retail permit holder 26
Warrant for arrest 52-82	Sale or gift to minor pro- hibited 55
Warrant for commitment... 86	Dispensing in club room, etc., prohibited 55
Warrant for contempt..... 15	Payment of and collection for 57-58
	Advertising of, prohibited.. 58
	Drinking of, on trains pro- hibited 62
	Power of city over liquor nuisance 63
	Packages must be labeled 67-107
	To soldiers, etc., prohibited.. 104
	J
I	JUDGMENTS—
INFORMATION AND INDICTMENT—	Lien on property 55
See also Criminal Procedure— Forms.	For mulct tax—a lien..... 75
Allegations of 50	JUSTICE OF THE PEACE—
May contain more than one count 53	See Criminal Procedure.
Second offense 7-50-53	Jurisdiction of 47-83
INJUNCTION—LIQUOR—	L
See Red Light Injunction Law.	LABELS—
When granted to abate nuis- ance 8	Contents marked—penalty.. 67
Who may bring and how tried 8-12	Interstate shipments..... 107
Violation of, attorney fee al- lowed 13	LANDLORDS—
Violation of, how punished.. 13	May terminate lease for vio- lation of liquor law..... 57
Advertising intoxicating liq- uor prohibited by 58	
Collection for liquor illegally sold 57-58	

	Page		Page
M		N	
MAIL—		NUISANCE—LIQUOR—	
See U. S. Statutes.		See Red Light Injunction Law.	
MANUFACTURER—		What constitutes liquor nuis-	
See Permit and Permit-holders.		ance	8
MANUFACTURING INTOXICATING LIQ-		Actions to enjoin, who may	
UOR—		bring and how tried.....	8
Prohibited	6	Evidence of	12
MAYOR—		Abatement of	16
Duties of, in general.....	120	Who may bring action to	
MINORS—		abate—procedure	8
Sale or gift of tobacco to,		Abatement by owner.....	18
prohibited	108	Application of proceeds after	
Use of cigarettes prohibited	116	abatement	19
Sale or gift of liquor to		Prepayment of fees not re-	
minor prohibited	55	quired—costs	19
When entitled to damages		Advertising—what consti-	
for sale or gift of liquor..	56	tutes	58
When sentence suspended for			
use of cigarettes.....	116	O	
MULCT TAX—CIGARETTES—		OFFICERS—	
Amount—who liable for....	110	See Duties of.	
Assessment of—notice...110-115		Removal of, in general.....	122
MULCT TAX—LIQUOR—		ORIGINAL NOTICE—	
Defined—who liable for....	69	See Forms.	
Return by assessor—notice..	70	ORIGINAL PACKAGE—	
Blanks for return of.....	73	Defined	109
Return by citizens—notice..	73		
Duty of auditor and treas-		P	
urer	74	PEACE OFFICER—	
How paid—lien	75	Defined	120
Entry of—payment of.....	76	Right to examine shipments	66
When delinquent—collection		Duty to comply with request	
of—sale	76	of governor or attorney	
Collection of, by selling per-		general	92-93
sonal property	77	Duties of, in general.....	120
Application to remit.....	77	Duty as to liquor law....	66-121
Hearing on application—evi-		PENALTIES FOR—(See also U. S.	
dence—appeal	77	Statutes.)	
Remittance—costs	78	Manufacturing, selling, etc..	7
Trial on appeal from assess-		Keeping nuisance	8
ment	78	Violation of an injunction..	9-13
Division of	79	Violation of retail permit	
Duty of county attorney to		statutes	20
enforce	80	Making false statement in re-	
Effect of payment	80	quest to purchase.....	29-30

Page	Page
Penalty For—Con.	Bond of, brewers, etc. can-
Unlawful disposition of, by	not be a surety..... 20
pharmacists and manufac-	Penalty 20
turers 29	Application 21
Violation of manufacturer's	Notice of application.... 21
permit 37	Hearing—remonstrance .. 22
Failure of wholesale drug-	Oath of applicant..... 23
gists to comply with law.. 41	Bond of applicant..... 23
Intoxication or use of liquor 53	Issuing of permit—condi-
Sale or gift to minor or in-	tions 24
toxicated person 55	Record of permit proceed-
Dispensing in club room, etc. 55	ings—costs 26
Landlord may terminate	What sales permitted.... 26
lease 57	Requests to purchase—how
Advertising intoxicating liq-	made 27
uor 58	Penalties—making false
No release from imprison-	statement, etc. 29-30
ment for violation of liquor	Record of purchases and
laws 60	sales 30
Bootlegging 60	Illegal sales—evidence of 31
Second offense 61	How business conducted.. 32
Persistent violation 61	Report of sales to county
Drinking on passenger train,	auditor 32
etc. 62	Revocation of permit.... 33
Carrying liquor on train, etc. 63	To whom he may trans-
False labeling of shipments	port liquor 66
—intrastate 66-67	Manufacturers'
Issuing false bills of lad-	Who may obtain 34
ing 67	Application 34
Transporting liquor without	Hearing of application.... 35
label 67	Bond of 35
Failure to pay mulct tax... 75	Record of—shipping per-
Violation of Red Light Law 99	mits 35
Violation of "Bone-Dry" Law 103	Use of shipping permits.. 36
Sale of liquor to soldiers, etc. 104	Transportation to holder
Sale or gift of tobacco to	of 37
minor 108	Penalty for violation of.. 37
Sale or gift of cigarettes.... 108	Wholesale Druggists'
Use of cigarettes by minor.. 116	May sell for certain pur-
PETITIONS—	poses 38
See Forms.	Request to purchase—how
PERMITS AND PERMIT HOLDERS—	made 38-39
Kinds of 19	Shipments—how made.... 39
Retail	Transportation—when au-
Qualifications of 20	thorized 40
Brewers, distillers, dis-	Penalty for failure to com-
qualified 20	ply with law..... 41
	Corporation defined 41

	Page		Page
Transportation—Con.		Carrier not to collect purchase price	106
By retail permit holder.....	66	How packages must be marked	107
False statement as to contents—penalty	66	Liquor shipments barred from mails	107
Failure to label—penalty....	67	Federal license stamp must be posted	108
By common carriers—when allowed—record books—delivery to consignee only penalty	67	Sale or gift to Indians prohibited	108
U		V	
UNITED STATES STATUTES—		VETERINARIANS—	
Webb-Kenyon Law.....	102	How they may obtain liquor	38
Reed "Bone-Dry" Law.....	103	W	
Sale of liquor to soliders, etc., prohibited	104	WEBB-KENYON LAW—	
Suppression of Red Light houses near military camps	105	See United States Statutes.	
Interstate shipment of intoxicating liquor.....	106	WHOLESALE DRUGGIST—	
		See Permits and Permit-holders.	



